# (26,752)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1918.**

# No. 666.

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DETROIT UNITED RAILWAY, APPELLANT,

*vs.*

CITY OF DETROIT.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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# BILL OF COMPLAINT.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

DETROIT UNITED RAILWAY,
a Michigan Corporation,
Plaintiff,

vs.

CITY OF DETROIT,
a Municipal Corporation,
Defendant.

*To the Honorable Judges of the District Court of the United States, Eastern District of Michigan, Southern Division, in Equity:*

BILL OF COMPLAINT of the Detroit United Railway Company, a corporation, plaintiff, against the City of Detroit, a municipal corporation, defendant, humbly complaining, shows unto the Court:

1. That the plaintiff, the Detroit United Railway Company, is a corporation existing under the laws of the State of Michigan and a citizen of the said State of Michigan, with its head office in the City of Detroit, in the Southern Division of the Eastern Judicial District of Michigan. That the defendant, the City of Detroit, is a municipal corporation organized under the laws of such State of Michigan, and is a citizen of said state, located within the Southern Division of the Eastern Judicial District of Michigan.

2. The Detroit United Railway Company, plaintiff, was incorporated under the laws of the State of Michigan in December, 1900, with an authorized capital stock of $12,500,000, which was subsequently, and on March 1, 1917,

increased to $15,000,000, and commenced operations on December 31, 1900, and on that day acquired properties theretofore owned and operated by the following companies:

Detroit Citizens Street Railway Company,
Detroit Electric Railway,
Detroit, Fort Wayne & Belle Isle Railway,
Detroit Suburban Railway,

which comprised all of the street railway properties in the City of Detroit, and formed the nucleus of the present street railway system now serving the people within the municipality of the City of Detroit.

3. During the year 1901 plaintiff purchased the properties of certain suburban and interurban railway companies owning the following lines, viz:

Feb. 20, Wyandotte & Detroit River Railway (now known as the Wyandotte Division);

May 1, Detroit & Northwestern Railway (now known as the Orchard Lake Division);

June 1, Detroit, Rochester, Romeo & Lake Orion Railway, and the Detroit, Utica & Romeo Railway (together now known as the Flint Division), and the North Detroit Electric Railway (now part of the city service system of the City of Detroit).

4. All of the foregoing properties were acquired by the purchase of the assets of the respective companies.

5. The Detroit United Railway Company, plaintiff, also acquired other properties by the purchase of the entire outstanding capital stock of the respective companies hereinafter named, on the dates below enumerated, viz:

June 11, 1901, Detroit & Port Huron Shore Line Railway;

Aug. 1, 1901, Sandwich, Windsor & Amherstburg Railway;

March 1, 1906, Detroit, Monroe & Toledo Shore Line Railway;

Feb. 1, 1907, Detroit, Jackson & Chicago Railway.

6. That the Detroit United Railway, plaintiff, now owns all of said lines of railway, and the same have been extended until at this time it owns and operates within the limits of the municipality of the City of Detroit upwards of 270 miles of tracks.

7. That the properties so acquired from the various companies above referred to were operated under certain franchise grants, made by the City of Detroit to the several companies named, which provided for certain rates of fare hereinafter referred to. The franchise rights originally

granted by said municipality to the several companies named were originally granted when the boundaries of the municipality of the City of Detroit were very much less in extent than they are at the present time, by reason of which fact several of the railway companies above referred to which had so acquired such franchise rights, had acquired from the townships and municipalities adjoining the City of Detroit, independent and separate franchises covering the territory within such townships and villages, a large part of the territory of which townships and villages has subsequently been included in the City of Detroit by lawful extension of the territorial limits of the City of Detroit at different times.

8. That in certain of the grants made by the municipality of the City of Detroit to the companies hereinbefore referred to, which were acquired by the Detroit United Railway, plaintiff, such grants were made for a time specified in such grants, and it is claimed on behalf of the municipality of the City of Detroit that by reason of the expiration of the time for which such grants were originally made, that said grants and the rights acquired thereunder have expired, and that said Detroit United Railway, plaintiff, is operating its cars and giving the people of the City of Detroit service over the lines upon which said franchises are so claimed by the City of Detroit to have lapsed, without any definite and fixed right as to terms of operation of their lines of railway thereon.

9. That the franchise rights so granted upon the following streets or portions of streets within the City of Detroit are claimed by the said City of Detroit to have so lapsed on the dates indicated below, as follows:

MICHIGAN AVENUE: The north track from Woodward avenue to Rowland street, and from Porter street to Livernois avenue; the south track from Abbott street to Livernois avenue, on November 14, 1909.

CONGRESS AND BAKER STREETS: On Mt. Elliott avenue, from Jefferson avenue to Fort street east; on Fort street east to Brush street; on Brush street, from Fort street east to Congress street. The north track on Congress street, from Brush street to Woodward avenue; all tracks from Woodward avenue westerly to Sixth street; on Brooklyn avenue from Porter street to Baker street; on Baker street from Brooklyn avenue to Twenty-fourth street; on Twenty-third street to Dix avenue from Baker street; on Dix avenue from Twenty-third street to Twenty-fourth street; on Dix avenue from Twenty-fourth to Livernois avenue; on November 14, 1909.

CASS AVENUE AND THIRD STREET: On Larned street from Third street to Griswold street; on Griswold street from Larned street to State street; on State street, a single track from Griswold street to Rowland street; all tracks on State street, between Rowland street and Cass avenue; on Cass avenue from State street to Ledyard street; on Ledyard street from Cass avenue to Third avenue; on Third avenue from Ledyard street to Holden avenue; on Holden avenue from Third avenue to Greenwood avenue, on November 14, 1909.

TRUMBULL AVENUE: From Abbott street northerly to the railroad crossing, on November 14, 1909.

ATWATER STREET: From Woodward avenue to Brush street; on Brush street from Atwater street to Jefferson avenue, on November 14, 1909.

WOODWARD AVENUE: From the railroad crossing southerly to Grand River avenue; from Fort street west southerly to the river, all tracks except one, on November 14, 1909.

BRUSH AND RUSSELL STREETS: On Brush street from Gratiot avenue to Rowena street; on Rowena street from Brush street to St. Antoine street; on St. Antoine street from Rowena to Farnsworth street; on Farnsworth street from St. Antoine street to Russell street; on Russell street north from Farnsworth street to the end of the line, on November 14, 1909.

CHENE STREET: On Atwater street from Jos. Campau avenue to Chene street; on Chene street from Atwater street northerly to Newton street, on November 14, 1909.

JEFFERSON AVENUE: From a point 194 feet west of the west line of Fifth street to Concord avenue; from Field avenue to a point 200 feet east of Baldwin avenue, on November 14, 1909.

GRATIOT AVENUE: On Monroe avenue, the northwest track from Woodward avenue to Farmer street; on Monroe avenue, both tracks from Farmer street to Randolph street; on Randolph street from Monroe avenue to Gratiot avenue; on Gratiot avenue from Randolph street to Sheridan avenue, on November 14, 1909.

MACK AVENUE: From Gratiot avenue to Baldwin avenue, on November 14, 1909.

FORT STREET WEST: On Fort street west beginning at a point on said street where the same intersects at the west line of Porter farm; thence westerly on said Fort street west to Clark avenue; thence southerly on Clark avenue to West Jefferson; thence westerly on said avenue to Artillery avenue, expired on June 17, 1910.

On Fort street west on the west line of the Porter farm to Woodward avenue, across Woodward avenue to Cadillac Square; on Cadillac Square (south part) from Woodward avenue to Randolph street; on Cadillac Square (north part) from Woodward avenue to Bates street; on Bates street from Cadillac Square to Randolph street; on Randolph street from Monroe avenue to Cadillac Square; on Monroe avenue from Randolph street to Elmwood avenue; on Elmwood avenue from Monroe avenue to Champlain street; on Champlain street from Randolph street to Baldwin avenue; on Helen avenue from Jefferson avenue to Champlain street, expired on June 30, 1910.

On Fort street west beginning at Clark avenue, thence westerly to Artillery avenue, expired July 24, 1910.

GRAND RIVER AVENUE: On Grand River avenue to a point in or about the West Grand Boulevard to Woodward avenue; thence on Woodward avenue to Congress street; thence on Congress street to Mt. Elliott avenue; on Myrtle street from a point in or about the West Grand Boulevard to Grand River avenue; on Greenwood avenue from Holden road southerly to Grand River avenue, expired on December 31, 1915.

10. Copies of the ordinances or grants under which the said defendant, the City of Detroit, makes the claim that the rights of the plaintiff company have lapsed are attached hereto, and made a part hereof, marked respectively Exhibits A-1 to A-21 inclusive.

11. That among the grants made by townships adjacent to the City of Detroit that were subsequently acquired by the plaintiff company were grants made by the Township of Springwells, then adjoining the City of Detroit on the West, covering that portion of the River road, so-called, in said Township of Springwells, between Artillery avenue, (the then westerly limits of the City of Detroit) and the River Rouge. That said grants were made by ordinances or agreements, copies of which are attached hereto and marked Exhibits B-1 and B-2, and made a part hereof, to which reference is hereby made. That a street railway line, in accordance with the terms of such grants, Exhibits B-1 and 2, was constructed on said street by the plaintiff and has since been and now is operated by the plaintiff company. That by the terms of such grants the Detroit United Railway, plaintiff, as the assignee of the original grantee named in said franchise, acquired the right to operate and maintain its line of street railway on said River road until December 14, 1921, and to collect a fare within

said township within said limits of five cents for each passenger carried each way upon its said line, without any transfer privileges to any passenger.

That the line so operated by the plaintiff company upon such portion of the River road between Artillery avenue in said City of Detroit and the River Rouge is a part of its general street railway system in the City of Detroit and is a continuation of the so-called Fort street line within said city.

That subsequently to the acquiring of said rights by the plaintiff company, the territorial limits of the City of Detroit, by an act of the Legislature duly enacted, were extended on both sides of said River road to the River Rouge, and the said limits of the City of Detroit, at the time of the enactment by the Common Council of the City of Detroit of the ordinance hereinafter referred to, set out in Exhibit "X" attached to this Bill of Complaint, included that portion of the River road referred to between Artillery avenue and the River Rouge, over which the right to maintain and operate its lines of street railway between Artillery avenue and the River Rouge was granted by said Township of Springwells by the ordinance or agreements hereinbefore referred to, namely, Exhibits B-1 and B-2, and under the terms of which the plaintiff company has a right to collect for each passenger carried over such line in either direction a fare of five cents without giving any transfer privileges.

12. That the Village of Fairview was duly incorporated by an act of the Legislature of the State of Michigan, prior to May 1, 1915, and included the territory upon both sides of Jefferson avenue, extending from the then easterly limits of the City of Detroit to the so-called Cadieux road in the Township of Grosse Pointe, a distance of about five miles.

That on May 16, 1905, after the said Village of Fairview had been so duly incorporated, it, through its proper legislative authority, to-wit, its Board of Trustees, duly enacted an ordinance granting to the plaintiff company the right to construct, operate and maintain a street railway on Jefferson avenue in said Village of Fairview from its westerly limits to its easterly limits and to charge and collect a fare for the transportation of each passenger within said village, of five cents, without any transfer privilege.

That such line of street railway within said village was constructed on said street in accordance with the provisions of such franchise. Exhibit D has since been operated

and maintained by said plaintiff company and is still being operated by it as part of its general railway system within the City of Detroit, the same being the continuation of its so-called Jefferson avenue line in said City of Detroit, through the territory referred to. That subsequently and in 1907, by an act of the Legislature of the State of Michigan, duly enacted, the territorial limits of the City of Detroit was extended on both sides of Jefferson avenue, easterly to the so-called Alter road within said Village of Fairview, and thereby plaintiff's street railway line within said Village of Fairview to said Alter road, a distance of about three miles, became included within the territorial limits of the City of Detroit.

That attached hereto and made a part hereof marked "Exhibit D," is a copy of said ordinance so enacted by the Board of Trustees of said Village of Fairview, May 16, 1905, and by the terms of said ordinance, the plaintiff company has and will continue until May 16, 1935, to have the right to maintain and operate its railway on said Jefferson avenue within the present territorial limits of the City of Detroit, between what was its easterly territorial limits on May 16, 1905, and said Alter road, a distance of three miles, and to collect thereon for each passenger carried within said territory, five cents, without any transfer privileges to any such passenger paying such fare, or selling either six tickets for twenty-five cents or eight tickets for twenty-five cents good for the transportation of such passengers.

13. That the northerly territorial limit of the City of Detroit up to May, 1891, on Woodward avenue was Pallister avenue. That said Woodward avenue was the dividing line north and south between the townships of Hamtramck and Greenfield in the County of Wayne, each of which adjoined the City of Detroit on the north.

That on October 17, 1885, the Township of Greenfield, by agreement duly entered into by its proper officers, duly authorized, granted in perpetuity a franchise for the construction, operation and maintenance of a street railway through said township on Woodward avenue, a copy of which is attached hereto and marked Exhibit "E".

And on the 17th of April, 1891, the Township of Hamtramck, by its proper officers duly authorized, entered into an agreement granting a franchise in perpetuity for the construction, operation and maintenance of a street railway through said township on Woodward avenue, a copy of which is attached hereto and marked Exhibit "F" and

made a part hereof. That a street railway line was constructed on said street in accordance with the terms of such franchise.

That by the terms of such franchises and grants, the grantee therein and its assigns were given the right in perpetuity to construct, operate and maintain a street railway for the carriage of passengers on Woodward avenue from the then northerly limits of the City of Detroit to the so-called Six Mile Road, crossing the said Woodward avenue at a point distant six miles from the city hall of the City of Detroit, such Pallister avenue, the then northerly city limits of the City of Detroit being about three miles distant from said city hall.

That the plaintiff company thereafter, by proper assignment, transfer and conveyance, acquired and became the owner of all of the rights granted by said townships of Greenfield and Hamtramck under said grants, Exhibits "E" and "F," and thereunder have a right to maintain in perpetuity a street railway line on said Woodward avenue from said Pallister avenue to the Six Mile road aforesaid, except as modified as hereafter stated, and to collect from each passenger carried on its cars over such distance a fare of five cents without giving or granting any transfer or other privileges.

14. That on October 27, 1890, the northerly city limits of the City of Detroit on Woodward avenue in said city was Pallister avenue in said city of Detroit. That by act of the Legislature of the State of Michigan, duly enacted in 1889 the village of Highland Park was created, out of territory that had been theretofore within the townships of Greenfield and Hamtramck. The northerly limits of said Highland Park on said Woodward avenue was the Six Mile road hereinbefore referred to, and the southerly limits thereof Pallister avenue, the then said northerly limits of the City of Detroit.

That on October 27, 1890, the said Village of Highland Park, by its duly constituted officers, enacted an ordinance, a copy of which is attached hereto and made a part hereof, marked Exhibit "G," granting a franchise and right to the grantee named therein to construct, operate and maintain for a period of thirty years a street railway on Woodward avenue within said village of Highland Park from its southerly limits, to-wit, Pallister avenue to its northerly limits, the said Six Mile road, and to charge each passenger carried over such line a five cent fare without any transfer privilege. That a street railway line was constructed on said street as authorized by the terms of such ordinance.

That in 1891, by act of the Legislature of the State of Michigan duly enacted, the northerly city limits of the city of Detroit at Woodward avenue aforesaid was extended from its then northerly limits, Pallister avenue, to Webb avenue on the westerly side of Woodward avenue, and Woodland avenue on the easterly side thereof, a distance of two miles beyond Pallister avenue.

That all rights under said franchise granted by said ordinance, Exhibit "G," have been duly assigned, transferred and conveyed to the plaintiff company, and said portion of said line between Pallister avenue and Webb avenue on the west, and Woodland avenue on the east, has been maintained as a part of the plaintiff company's street railway system in the City of Detroit. And under and by virtue of the terms of said grant of October 27, 1890, plaintiff company has the right to continue to maintain and operate said street railway line between Pallister avenue and Webb and Woodland avenues as aforesaid for the period until October 27, 1920, and to collect a fare of five cents from each passenger carried over such portion of its line, but without transfer privilege.

15. That on November 1, 1897, the westerly or northwesterly limits of the City of Detroit was at the intersection of the Boulevard within said city and Grand River avenue.

That on November 1, 1897, the township of Greenfield, by its officers duly authorized, executed an agreement or franchise, a copy of which is attached hereto and made a part hereof, marked Exhibit "H," granting the right to the grantee therein named to construct, operate and maintain a street railway line from said city limits as aforesaid—at the intersection of the Boulevard and Grand River avenue—to the westerly limits of said township on Grand River avenue, a distance of four miles, such right to continue for a period of thirty years from and after such date; and to collect a five cent fare for each passenger transported in either direction over said line, or to sell six tickets for twenty-five cents, good for one fare in either direction over said line within said township, without any transfer privilege.

That a line of street railway on said street as authorized by the provisions of such ordinance was constructed.

That since 1897, the westerly or northwesterly limits of the City of Detroit on Grand River avenue has been lawfully extended northwesterly a distance of four miles beyond the then limits at the intersection of the Boulevard and Grand River avenue.

That said ordinance or agreement, Exhibit "H" and all rights thereunder, have been duly assigned, transferred and conveyed to the plaintiff company which has for several years operated and now operates a street railway line upon said Grand River avenue between the Boulevard and the present westerly limits of the City of Detroit as part of its general street railway system. And by virtue of such grant, Exhibit "H," and the assignment and conveyance thereof to the plaintiff company, it has a right to continue and operate said tracks until November 1, 1927, and to collect as fare for each passenger conveyed either way over such territory five cents without any transfer privilege, or in lieu thereof to sell six tickets for twenty-five cents, good without transfer for transportation of one passenger each way over said line within said limits, to-wit, from the Boulevard on Grand River avenue northwesterly to the present city limits of the City of Detroit, a distance of four miles.

16. That on July 1, 1897, the westerly territorial limits of the City of Detroit at its intersection with Michigan avenue in said city was Livernois avenue. That on July 1, 1897, the township of Springwells, by its proper officers, duly authorized, executed and granted a franchise or agreement, a copy of which is attached hereto and made a part hereof, marked Exhibit "I," by the terms of which the grantee named therein was entitled to construct, operate and maintain a line of street railway on said Michigan avenue from Livernois avenue, the westerly city limits of said city, to Addison avenue, a distance of one and one-half miles, for the period of thirty years thereafter. The fare fixed in such grant was five cents cash fare for transportation for each passenger, or eight tickets for twenty-five cents, entitling the holder thereof to conveyance over said line within such limits in either direction, but only within said township of Springwells.

That a line of street railway as authorized by such franchise was constructed.

That subsequently said franchise, Exhibit "I", was duly assigned, transferred and conveyed to the plaintiff company. Said plaintiff company, by virtue of such franchise and such assignment, is entitled for a period of thirty years from and after July 1, 1897, to-wit, to July 1, 1927, to operate and maintain a street railway line upon Michigan avenue between Livernois and Addison avenue, and to collect as cash fare for each passenger transferred in either direction thereon within said township of Springwells five cents, or to sell eight tickets for 25 cents, entitling the hold-

er thereof to transportation over said Michigan avenue between said Livernois avenue and Addison avenue, without any transfer privilege on either payment of cash fare or purchase of tickets beyond the limits of said township of Springwells in either direction.

That for several years past and at the present time the plaintiff company has operated said line of railway on Michigan avenue between Livernois avenue and Addison avenue as a part of its general street railway system within the City of Detroit.

That subsequently the said westerly limits of the City of Detroit on Michigan avenue was lawfully extended from Livernois avenue to Addison avenue, a distance as aforesaid of one and one-half miles.

17. That on November 9, 1897, the westerly territorial limits of the City of Detroit on Michigan avenue in said city was Livernois avenue. On said November 9, 1897, the proper officers of the township of Springwells being thereunto duly authorized, executed a franchise or agreement, a copy of which is attached hereto and made a part hereof, marked Exhibit "J", under and by virtue of the terms of which the grantee therein named was authorized and empowered to construct, operate and maintain a line of street railway from Addison avenue in such township of Springwells on Michigan avenue to the westerly limits of said city, such franchise and grant was to continue for a period of thirty years from and after said date, November 9, 1897, and the grantee was further authorized to collect a straight five cent fare for each passenger transported over said line within said township from Addison avenue westerly on Michigan avenue to the westerly limits of said township.

That a line of street railway in accordance with the provisions of such franchise was constructed and for several years past has been and now is operated.

That subsequently the westerly territorial limits of the City of Detroit on Michigan avenue were extended to a point six blocks west of Addison avenue, and thereafter such six blocks, in the limits provided by the terms of said ordinance, became subject to operation by the plaintiff company, and said plaintiff company has for several years and does now operate a line within said six blocks as part of its general street railway system in the City of Detroit.

That by virtue of said franchise Exhibit "J", the company operating said line for said six blocks on Michigan avenue is, until November 9, 1927, entitled to collect a

straight cash fare of five cents for each passenger conveyed thereon within such limits in either direction, but without any transfer privilege.

18. That on January 23, 1899, the northerly territorial limits of the City of Detroit at its intersection with Joseph Campau avenue in said city was Newport street. That on January 23, 1899, the township of Hamtramck duly granted a franchise, a copy of which is attached hereto and made a part hereof, marked Exhibit "K", for the construction, operation and maintenance of a line of street railway from the southerly line of the township of Hamtramck at its intersection with Joseph Campau avenue, northerly on Joseph Campau avenue to the Davidson Road, easterly on the Davidson Road to North Detroit, and westerly on Davidson Road to Highland Park, in all a distance of five miles, which franchise was to continue for a period of thirty years, and authorized the grantees therein named, or their assigns, to collect a straight fare of five cents for the transportation of passengers over such lines of street railway within said township, but without any transfer privileges of any kind.

That said franchise, Exhibit "K", and all of the rights of the grantees thereunder were duly assigned, transferred and conveyed to the plaintiff company, and by virtue of which franchise and the assignment thereof to it, said plaintiff company is entitled to operate and maintain said line of street railway until January 3, 1929, and to collect thereon a cash fare of five cents for every passenger transported in either direction thereon, within the limits specified, without any transfer privilege.

That a line of street railway in accordance with the terms of such franchise was constructed on said street, and the plaintiff company has for several years past, and at the present time said street railway line within such limits, has been operated as a part of the street railway system of the plaintiff company.

That subsequent to the granting of said franchise, the northerly territorial limits of the City of Detroit were lawfully extended so as to include all that portion of the township of Hamtramck through or over which said rights to maintain and operate said street railway were granted.

18½. That on October 7, 1898, the northerly territorial limits of the City of Detroit at its intersection with the so-called Center Line Road, now called Van Dyke Road, was Harper avenue in said City of Detroit.

That on October 7, 1898, the proper officer of the township of Hamtramck, being thereto duly authorized, granted a franchise or right, a copy of which is attached hereto, and made a part hereof, marked Exhibit "L", authorizing the grantee therein named to construct, operate and maintain a line of street railway within said township of Hamtramck from the then northerly limits of the City of Detroit, at its intersection with the southerly end of the Center Line Road so called, namely, Harper avenue, northerly on said Center Line Road, to the northerly line of said township of Hamtramck, a distance of three miles. Said line was duly constructed and put in operation by the grantee named in said Exhibit "L". By the terms of such franchise, Exhibit "L", the grantee named therein and its assigns was entitled to operate and maintain said road for a period of thirty years from and after the date of such grant, to-wit, until October 7, 1928, and to collect within said township a cash fare of five cents for each passenger carried in either direction over said line, and to sell eight tickets for a quarter, good between 6 and 7 A. M. and 5:30 and 6:30 P. M. for the transportation of a passenger in either direction over said line within said township of Hamtramck, but without any transfer privileges.

That said franchise and all of the rights of the grantee thereunder were subsequently duly assigned, transferred and conveyed to the plaintiff company, and became and have been operated for several years last past and are now so operated by the plaintiff company as part of its street railway system. And by virtue of such ordinance and assignment thereof, plaintiff company is entitled to operate and maintain such street railway line for a period of thirty years until October 7, 1928, and to collect the fares within said township provided for in said ordinance as above set forth.

That subsequently the territorial limits of the City of Detroit were lawfully extended northerly so that its territorial limits included that portion of the township of Hamtramck embracing such Center Line Road and both sides thereof from Harper avenue on the south and the northerly limits of said township of Hamtramck, a distance of three miles as aforesaid.

19. That on May 14, 1898, as well as on May 6, 1901, the northwesterly territorial limits of the City of Detroit on Dix avenue in said city was the intersection of Livernois avenue and Dix avenue. That on May 4, 1898, an ordinance was granted by the proper authorities of the town-

ship of Springwells, which was again amended by an ordinance granted by said township enacted or executed by its proper authorities, copies of which ordinances or franchises are hereto annexed and made a part hereof, marked Exhibit "M-1" and "M-2."

That by the terms of such franchises, Exhibits "M-1" and "M-2", the grantee in said franchise and its assigns were authorized to construct and operate and maintain for a period of thirty years from May 14, 1898, a street railway line commencing on Dix avenue at the intersection of Dix and Livernois avenues, extending westerly through said township of Springwells on Dix avenue to Toledo avenue, thence on Toledo avenue to Springwells avenue, on Springwells to Chamberlain, thence on Chamberlain to Woodmere, thence on Woodmere to Fort street west; and to collect a five cent cash fare for each passenger transported over said line in either direction within said township with the right of any such passenger to be carried by direct route to the city hall of the City of Detroit or to be given a transfer that would carry such passenger to said city hall.

That a line of street railway in accordance with the terms of such ordinance was constructed.

That subsequently said franchise and all rights thereunder were duly assigned, transferred and conveyed to plaintiff company, and said line of street railway has for several years been and still is maintained and operated as a part of the general street railway system of plaintiff company within the City of Detroit, and by virtue of said franchises, Exhibits "M-1" and "M-2," said plaintiff company is entitled to maintain and operate said street railway lines over the streets so indicated in said Exhibits "M-1" and "M-2" until May 14, 1928, and collect from each passenger transported over the same in either direction a cash fare of five cents within said township with the privilege of such party to be carried by a direct route to the city hall of the City of Detroit or provided with a transfer that would carry him to the said city hall, and was not required thereby to sell any tickets for transportation over such line or any connection thereof at a price below such five cent fare.

20. That on August 5, 1889, the westerly territorial limits of the City of Detroit at its intersection with Fort street west in said city was Artillery avenue, to the west of which limits and adjoining said city was the township of Springwells. That on August 5, 1889, the proper

authorities of the township of Springwells duly granted a franchise, a copy of which is attached hereto and made a part hereof and made Exhibit "M", authorizing the grantees therein named or its assigns to construct, operate and maintain a line of street railway on west Fort street in said City of Detroit from the entrance to Woodmere Cemetery on said west Fort street westerly to the Dearborn Road, for a period of 30 years from and after the date thereof, and to collect and charge a cash fare of five cents for each passenger carried in either direction over said line of railway, with the right of transfer only to the other lines of the grantee therein named, to wit: Over the lines of the Fort Wayne, Belle Isle and Elmwood street railway lines, then so-called.

That in accordance with the terms of such franchise a street railway line was constructed.

That subsequently all franchises and all the rights of the grantee thereunder were duly assigned, transferred and conveyed to the plaintiff company, and said line of street railway company over said west Fort street between the entrance to Woodmere Cemetery and Dearborn road has since been and now is operated and maintained by the plaintiff company as a part of its street railway system within the City of Detroit, and by virtue of said franchise, Exhibit "M", and the assignment thereof to it the plaintiff company is entitled to operate said railway until August 5, 1919, and such time was subsequently extended to December 14, 1921, and to collect from each passenger transported over the same, in either direction a cash fare of five cents, with the right of such passenger to a transfer giving him the right of transportation over the connecting lines of the Fort Wayne, Belle Isle & Elmwood street railway line, so-called, and no other, and not entitling any such passenger to either the six-for-a-quarter or eight-for-a-quarter tickets under any conditions.

21. That on May 7, 1891, the easterly territorial limits of the City of Detroit on Gratiot avenue was at Field avenue. That on May 7, 1891, the proper authorities of the township of Hamtramck granted a franchise, a copy of which is attached hereto and made a part hereof, marked Exhibit "O," giving and granting to the grantees therein named the right to construct, operate and maintain a line of street railway on Gratiot avenue from the westerly line of the township of Hamtramck, on Gratiot avenue, at its intersection with Gratiot avenue (the easterly line of the City of Detroit on Gratiot avenue) to the easterly line of

the township of Hamtramck, a distance of approximately two miles, the same to continue by the terms thereof for a period of thirty years, and it provided for a cash fare of five cents for the transportation of each passenger carried thereon in either direction within said township of Hamtramck; without any right of transfer to any passenger paying such fare; such rate of fare to continue until said line might come within the territorial limits of the City of Detroit. No transfer privileges were provided for under the terms of such ordinance or grant. That thereafter the plaintiff company acquired said franchise and all the rights of the grantees thereunder, and constructed a railway thereon as far as Leesville, and has operated and maintained it for several years last past, and is now operating the same as part of its general street railway system in the City of Detroit, and under and by the terms of such ordinance it has a right to continue such operation until May 7, 1921, and collect such fare, and no obligation is imposed upon it under the terms of such franchise to issue any so-called "workmen's tickets," or to issue any kind of tickets, either the six-for-a-quarter or eight-for-a-quarter or to issue any transfers to passengers boarding said line within said township of Hamtramck.

22. That on March 6, 1894, the township of Hamtramck, by its proper officers duly authorized, granted to the Rapid Railway Company, a corporation, a franchise, a copy of which is attached hereto, marked Exhibit "P," to construct, operate and maintain a street railway line, extending from the easterly limits of the City of Detroit (the junction of Harper and Gratiot avenues) in said city, to the easterly limits of the township of Hamtramck, and on March 10, 1894, the township of Grosse Pointe, by its proper officers duly authorized, duly granted to the said Rapid Railway Company, a corporation, a franchise, a copy of which is attached hereto, marked Exhibits "Q" and "R" to construct, operate and maintain a line of street railway on said Gratiot avenue between the easterly limits of the township of Hamtramck and the easterly limits of the township of Grosse Pointe.

That on March 10, 1894, the township of Grosse Pointe, lying easterly of the said township of Hamtramck, granted a franchise to the said Rapid Railway Company, a corporation, a copy of which is attached hereto marked Exhibits "Q" and "R," authorizing it to construct, operate and maintain a line of street railway on said Gratiot avenue within said township of Grosse Pointe between the westerly and easterly limits thereof. That all of said fran-

chises, Exhibits "P," "Q" and "R" provided for a minimum rate of fare of five cents cash for each passenger transported over such lines within said townships severally, and from French Lane to the City Hall in Detroit, and no provision was made for the issuing or sale of any tickets, either six-for-a-quarter or eight-for-a-quarter, or for any general transfer privileges or connecting lines to transport any such passengers to any point within the City of Detroit. And each of said franchises, Exhibits "P" and "Q" authorized said grantees, its successors or assigns, to continue to operate and maintain such lines of street railway for a period of not less than thirty years from and after the date of their granting.

23. That on November 28, 1894, the township of Hamtramck duly granted a franchise, a copy of which is attached hereto, marked Exhibit "S," to the Rapid Railway Company, a corporation, authorizing it to construct, operate and maintain a street railway line from the junction of Harper and Gratiot avenues in said township of Hamtramck, and easterly of Harper avenue to the dividing line between the townships of Grosse Pointe and Hamtramck, being the so-called Center Line Road. That said franchise, by its terms, was to continue during the life of the said Rapid Railway Company, its successors or assigns, and was in its effect a perpetual franchise, and under and by its terms a minimum fare of five cents for the transportation of each passenger carried over said line within said township of Hamtramck on said Harper avenue was provided for, and no provision was made imposing any obligation upon the grantee, its successors or assigns, to issue or sell any tickets at six for twenty-five cents or eight for twenty-five cents or grant any transfer privileges in connection therewith.

24. The said Rapid Railway Company or its successors constructed such line of railway and operated a line of street railway from Leesville, above referred to, easterly on Gratiot Avenue to the City of Mt. Clemens, continuing northeasterly therefrom to the City of Port Huron, through the towns of Algonac, Marine City and St. Clair, and is a connecting line with the Gratiot Avenue line of the plaintiff company, its cars being operated by its employees over the Gratiot Avenue line of the plaintiff company within the City of Detroit. That subsequent to the granting of said franchises, Exhibits "O," "P," "Q," "R" and "S," the territorial limits of the City of Detroit were lawfully extended from Leesville, aforesaid, easterly to and beyond the easterly line of the Township of Gratiot, a distance of upwards of three miles.

That in addition to the foregoing unexpired franchises of the plaintiff company, a copy of the franchise relative to the so-called three cent lines is attached hereto and made a part hereof, and marked Exhibit "T."

That the franchise lines referred to in the ordinance adopted by the Common Council of the City of Detroit at its said meeting held August 9, 1918, hereinafter referred to, a copy of which is attached hereto and made a part hereof, marked Exhibit "X" are those which were constructed and are being operated under the ordinances, franchises and grants made in and by ordinances, franchises and grants, of which "A" to "T" inclusive, are copies, and the non-franchise lines referred to therein are those which were constructed and operated under the ordinances, franchises and grants made in and by the ordinances, franchises and grants, of which Exhibits "A-1" to "A-21" inclusive are copies.

25. That the population resident within the territorial limits of the City of Detroit exceeds 750,000, and is distributed over all the sections and parts thereof.

26. That the City of Detroit is an essentially industrial city—very much the largest part of its male population being employed and engaged in great industrial plants and factories being operated within the city limits and adjacent thereto and largely located at the outskirts of the City and for the most part are remote from the residences of the persons employed in such plants and factories, thus necessitating the transportation of employees of said plants and factories to and from their homes to their places of employment.

27. That the street railway system of the plaintiff company is substantially the only means of transportation for such employees to and from their homes to the places of their employment and the interruption of the operation of plaintiff company's entire street railway system as a single unit for such transportation or the separation of the so-called franchise lines from the so-called non-franchise lines, would paralyze the industrial and business life of the City of Detroit and throw thousands of its residents out of employment and shut down its industrial plants and factories.

That it would be impossible to serve the transportation needs of the residents of the City of Detroit by the separate operation or the discontinuance of the operation of either the so-called franchise lines or the so-called non-franchise lines.

28. That the plaintiff company owns its power stations, terminals, car barns and other facilities, representing millions of dollars in value, largely independent of any franchises or other contract obligations to the City of Detroit, and such facilities are absolutely essential to the operation of both the so-called franchises and the non-franchise lines of street railway.

29. That the value of plaintiff company's investment in the property employed in the operation of its street railway system within the city limits of the City of Detroit, necessary to the operation of the same and necessary to be employed to serve the absolute needs of the people resident within the City of Detroit, as of this date amounts to $33,523,423.00; this represents only the value of the physical value of its property so employed.

That such appraisal is based upon an appraisal made of the plaintiff company's property October, 1915, then situate within the territorial limits of the City of Detroit by Professor M. E. Cooley, Dean of the Engineering Department of the University of Michigan, and was made by the authority and direction of the Railway Commission of the State of Michigan for its official use—and supplemented by the cost of property added to that appraisal, made by Professor Cooley, in the extension of tracks, equipment and other necessary facilities.

30. That owing to the conditions created by the Great World War now in progress, the increased cost and burdens imposed upon the plaintiff company in maintaining, operating, extending and increasing the necessary facilities to care for the greatly increased population of the City of Detroit and their needs, from year to year, in recent years are in the aggregate enormous and among those increased costs and burdens are expenditures for increased cost of labor and material aggregating annually, more than $2,000,000 above the expenditures for such purposes in normal times.

Attached hereto and made a part hereof and marked "Exhibit Y," to which reference is hereby made, is a schedule showing correctly the cost—August 1, 1914, and May 1, 1918,—of various kinds of material necessarily used by plaintiff company in the operation, maintenance and necessary additions and extensions, showing the percentage in increase of cost of such material between such dates.

That until August 8, 1918, and from December 1, 1917, down to that date, the plaintiff company has operated its system of street railways on rates of fare on all of its lines, except the so-called three cent lines (the lines formerly owned by the Detroit Electric Railway) as follows:

Five cent cash fare for each passenger carried on or over its lines, including so-called universal transfers, with working-men's tickets, eight for twenty-five cents, between the hours of 5:30 and 7:00 A. M. and 5:15 and 6:15 P. M., and on the so-called three cent lines a cash fare of five cents, with eight tickets for a quarter, between the hours of 5:45 A. M. and 8:00 P. M., good only on such three cent lines with the privilege of a transfer on payment of a five cent cash fare, and also with the privilege of purchase of tickets by passengers of six tickets for twenty-five cents, also good for fare between 8:00 P. M. and 5:45 A. M.

That under such rates of fare, by reason of the increased cost of maintenance making necessary extensions and additions to its lines, equipment and other facilities, it was found that the gross revenue received by the plaintiff company, on the basis of such fares collected on its lines within the City of Detroit, was barely sufficient to provide for the expense of operating such property and the maintenance thereof, and it became necessary, therefore, to increase its revenue by the only means available, namely, increasing rates of fare for the transportation of passengers over its lines.

This necessity was aggravated by a demand made by its employees employed in the operation of its cars on and over its lines of street railway, so-called platform men—for a large increase in their compensation and the change of operating rules and schedules—that would largely increase plaintiff company's cost of operation.

That plaintiff company not seeing its way clear to accede to such demand, in view of its inability on the then existing cost for labor, without adding to its labor cost to provide for expense of operation and maintenance of its lines and property, declined to accede to such demand, whereupon such employees left its employment on a strike, thereby preventing the plaintiff company continuing the operation of its railway system.

31. That the industrial plants of the City of Detroit were very largely employed in manufacturing products of various kinds for the United States Government, needful for its purposes in prosecuting the war it is engaged in, and the stoppage of the operation of plaintiff company's street railway system interrupted the production of such products so required by the Government for the purpose stated.

That for this reason the Labor Department of the United States by its representatives acting under the authority

and by the direction of the President of the United States, intervened to procure the resumption of the operation of plaintiff company's lines of street railway so that the thousands of workmen employed in the production of products required by the Government for war purposes, which had been so interrupted by the strike of plaintiff company's employees preventing the operation of its lines of railway, might be enabled to resume their employment in the production of such Government war necessities.

That as a result of such intervention, it was agreed between plaintiff company and its striking employees then out on such strike, that they should return to their work and that the question of compliance with their demands for increased wages, change of rules of operations and schedules, etc., should be referred to the War Labor Board of the United States, of which Ex-President Honorable William H. Taft is President, to arbitrate and adjust the differences existing.

That said War Labor Board held meetings on May 27, 1918, at Chicago, Illinois, and June 28, to July 3, 1918, inclusive, at Washington, D. C., at which meetings the Mayor and City Counsellor of the City of Detroit appeared before said Board and asked leave to intervene to represent the interests of the City of Detroit and its people, and such leave being granted, said Mayor and City Counsellor did participate in such hearings.

That a full and exhaustive hearing was conducted by said Board and the needs of the employees of plaintiff company as to compensation and the ability of plaintiff company from its available income to provide for such needs, was fully and carefully presented, and after such hearing the matter was taken under consideration by said Board and later, on or about the 1st day of August, 1918, it made its award as follows:

NATIONAL WAR LABOR BOARD.

DOCKET NO. 32.

FINDINGS AND AWARD OF
JOINT CHAIRMEN AS ARBITRATORS
in re
EMPLOYEES
vs.
DETROIT UNITED RAILWAY COMPANY.

Washington, D. C.
1918.

National War Labor Board.

Docket No. 32.

AWARD.

The Arbitrators make the following findings and Award:

WAGES.

The Wage Scale for all Motormen and Conductors shall be:

First three months of service...43c per hr.
Next nine months of service.....46c " "
Thereafter .....48c " "

SCHEDULES AND HOURS.

There shall be no change in the various classes of runs as laid down by the Arbitration Board of 1917. The arrangement of the week day runs as to platform time and the spread of outside hours, including the method of penalizing outside hours in excess of 13, shall also be unchanged.

Whenever there is a break, or lay-off time, in any of the schedule runs amounting to 45 minutes or less, such break shall be paid for at the rates prescribed in this Award, and shall be considered to be part of the platform time.

SUNDAYS AND HOLIDAYS AND NIGHT CARS.

On Sundays and Holidays, runs shall all be straight runs with no more than 8 hours' time. Night car runs shall all be straight runs with no more than 8 hours' time and with ten hours' pay.

SENIORITY.

The present rules distinguishing passenger and freight car runs, and distinguishing from such runs line and construction car runs, shall be maintained.

SELECTION OF RUNS.

In the case of no change in the key, there shall be one general selection each six months. One to take place between April 15th and May 15th and the other to take place between October 15th and November 15th.

LINE AND CONSTRUCTION CAR MEN.

Line and construction car men are properly members of the Amalgamated Association.

CAR INSPECTORS, PIT MEN AND OTHERS.

The Car Inspectors, Controller Men, Pitmen and Pit Men Helpers have the right to organize in Trade Unions and to bargain collectively through chosen representatives. The conditions heretofore existing in this branch of the Company's business is the open shop, union and non-union men working side by side, and this condition shall continue, and shall not be deemed a grievance. The question of wages for these men is not decided, at this time, for the reason that the Company did not submit any suggestions upon the subject. It is therefore referred to an Examiner for complete investigation and report to the Arbitrators.

OVERTIME.

All Motormen or Conductors, including men on Interurban, Freight, Express, Line and Construction Cars, who are called upon to work extra trips or to do other extra work or tripper service in addition to the runs to which they are respectively assigned shall be paid time and one-half for all such time, and time and one-half from the completion of their run to the starting time of the extra trip or extra work.

No Motorman or Conductor, however, who regularly is assigned a schedule run paying more than 8 hours' Platform time, shall be required or allowed to run any such extra trips or do such work or tripper service unless there are no available extra men to do such work.

If a Motorman is quaified to act as a Conductor, the Company may require him to do Conductors' work and he shall do that work in accordance with this Section, provided there are no men rated as Conductors who are available. The same rule shall apply to Conductors who are qualified to act as Motormen.

WOMEN AND COLORED MEN.

It is understood that no objection shall be made to the employment of women or colored men if necessity arises.

WEARING OF OVERALLS.

Interurban Motormen shall be allowed to wear overalls under reasonable regulations of the Company as to uniform make and appearance.

PAYMENT OF BACK PAY.

The Company shall be allowed until September 1, 1918 to make the payment to its employees of the back pay due them under this Award.

INTERPRETATION OF AWARD.

For the purpose of securing a proper interpretation of the Award, the Secretary of the National War Labor Board shall appoint an Examiner who shall hear any differences arising in respect to this Award between the parties, and promptly render a decision, from which an appeal may be taken by either party to the Arbitrators making this Award.

Pending the appeal the decision of the Examiner shall be binding.

FORMER AGREEMENTS.

Except as modified by this Award, the agreement between the Company and the Association originally made in 1912 and since modified in 1913, 1914, 1916 and 1917, shall continue in effect during the time of this Award unless changed by mutual consent.

EFFECTIVE DATE.

This award is to take effect as of June 1, 1918, and shall continue for the duration of the War, except that either party may reopen the case before the Arbitrators at periods of six months intervals, beginning Feb. 1, 1919 for such adjustments as changed conditions may render necessary.

FINANCIAL RECOMMENDATION.

This award increases the maximum rate in Detroit from 40c an hour to 48c an hour. The increase is substantial, but required by the increased cost of living and is fair. Other changes in working conditions more favorable to

the men will normally add to the wage cost. The fares allowed to the Detroit Railway are exceptionally low, being 3c a passenger on some lines, 4c on others and 5c on others. They should all be raised to meet the increased operating cost due to the high prices of needed material and equipment and the increased pay herein awarded.

We make part of this award the words we have used in the Cleveland case:

"We have recommended to the President that special Congressional legislation be enacted to enable some executive agency of the Federal Government to consider the very perilous financial condition of this and other electric street railways of the country, and raise fares in each case in which the circumstances require it. We believe it to be a war necessity justifying federal interference. Should this be deemed unwise, however, we urge upon the local authorities and the people of the locality the pressing need for such an increase adequate to meet the added cost of operation.

This is not a question turning on the history of the relations between the local street railways and the municipalities in which they operate. The just claim for an increase in fares does not rest upon any right to a dividend upon capital long invested in the enterprise. The increase in fare must be given because of the immediate pressure for money receipts now to keep the street railways running so that they may meet the local and national demand for their service. Over capitalization, corrupt methods, exorbitant dividends in the past are not relevant to the question of policy in the present exigency. In justice, the public should pay an adequate war compensation for a service which cannot be rendered except for war prices. The credit of these companies in floating bonds is gone. Their ability to borrow on short notes is most limited. In the face of added expenses which this and other awards of needed and fair compensation to their employes will involve, such credit will completely disappear. Bankruptcy, receiverships and demoralization, with failure of service, must be the result. Hence our urgent recommendation on this head."

(Signed) WM. H. TAFT
FRANK P. WALSH } Arbitrators

Attest:
W. Jett Lauck,
Secretary, National War Labor Board.

32. That after the consideration by the officers of the plaintiff company of the said award of the War Labor Board, under and by the terms of which an additional burden, approximating two million dollars per annum was imposed upon the plaintiff company, it become increasingly urgent that some adequate provision for the increased revenue of the company should be provided for, and after considering the subject with great care, a communication was addressed to the Mayor and Common Council of the City of Detroit, of which the following is a copy:

August 2nd, 1918.

Hon. Oscar B. Marx,
Mayor, City of Detroit,
Detroit, Michigan.

My dear Sir:—

As doubtless you have been advised, the National War Labor Board has rendered an award establishing changed working conditions and higher rates of pay for Street car workers. This award is retroactive to June 1st, 1918.

The increased burden to be borne by the Detroit City Lines, is slightly in excess of $2,000,000 for labor alone. There are other substantial increases due to the higher cost of material, taxes, etc.

In rendering its award, the War Labor Board states,

> "The fares allowed the Detroit United Railway are exceptionally low, being 3 cents a passenger on some lines, 4 cents on others and 5 cents on others. They should all be raised to meet the increased cost due to the high prices of needed material and equipment, and the increased pay herein awarded."

You will appreciate that we have earned nothing with which to meet the retroactive pay allowed, and that the increases are being incurred daily.

Believing that your Honor and the Detroit Common Council appreciates fully the urgency of the situation, and will desire to take prompt action thereon, I beg to request that you will call a meeting of the Common Council for the earliest possible hour at which we desire to propose the following:

> '(a) That for the time being, a five cent fare with a charge of 1c for a transfer be established for all lines in the City one fare zone.
>
> (We are advised by Counsel, that it is competent for the Common Council and the Railway Company, in order to meet the conditions brought on by the

war, to agree to a modification of the franchise of the Three Cent Lines respecting the rate of fare, by such a day to day agreement as would be appropriate,) or

(b) That the following rates of fare be established within the one fare zone—single cash fare 6c, ten tickets for 55c, both with free transfers. The rates of fare now in effect on the Three Cent Lines to remain unchanged, except the 6c single cash fare and the ten tickets for 55c will be accepted on these Lines good for a transfer to the so-called Five Cent Lines.

As either of the foregoing proposals is in direct accord with the finding of the War Labor Board, the Company urges the necessity of immediate action on the part of the Common Council, with the hope that its judgment will be exercised with such promptness that further action on our part will not be needed.

I beg to remain,

Yours very truly,

DETROIT UNITED RAILWAY,
By F. W. BROOKS, *President.*

E. E. S.

That the Common Council of the City of Detroit disposed of the matter referred to in said communication by a resolution adopted by it of which the following is a copy.

By Ald. Vernor:

RESOLVED, That the petition of the Detroit United Railway Company that it be permitted to advance the rate of fares on the Detroit Railway lines be, and it is hereby denied. And be it further resolved, That the Detroit United Railway Company be and it is hereby notified that any raise in fare or any change by them of the terms or conditions of any franchise under which it is or claims to be operating its cars within the corporate limits of the City of Detroit will be held by the City of Detroit to be a voluntary and automatic cancellation by the Detroit United Railway Company of all existing or alleged franchise obligations between it and the City of Detroit. And be it further resolved, That the City Clerk be and he is hereby instructed to serve upon the Detroit United Railway Company a certified copy of this resolution.

Adopted as follows:

Yeas—Ald. Ashe, Auch, Bleil, Bradley, Braun, Brennan, Crane, Dill, Ellis, Glinnan, Hindle, Littlefield, Lodge, Mitter, Nowe, Reinhold, Ross, Schultz, Thompson, Vernor, Walsh, Wenzel, Zink and the President—24.

Noes—Starkey—1.

That thereupon there being no other alternative under the conditions existing, the plaintiff company put in operation an increased schedule of fares, applying to all of its lines within the City of Detroit, as follows:

Single cash fare, 6 cents; ten tickets for 55 cents. Either the cash fare or ticket being good for a transfer on any connecting or intersecting line within the limits of the City of Detroit.

On the lines of the Detroit Railway the fares provided for by the franchise granted to that company remained in force, and on payment of a 6 cent fare or a ticket, sold at the rate of ten for 55 cents, a transfer will be given upon that line to any other intersecting or connecting line of the so-called five cent system.

That the rates of fare put in effect August 8, 1918, were the lowest rates of fare that would provide reasonably for the operating expenses of the company, payment of its taxes and insurance and depreciation of its property.

33. That a special meeting of the Common Council of the City of Detroit was convened on August 9, 1918, at 7 P. M. at which meeting an ordinance of which Exhibit "X" attached and made a part hereof is a copy, was presented for consideration by the said Common Council, and was immediately adopted at said session of the Common Council.

That on August 10, 1918, said ordinance was approved by the acting Mayor of the City of Detroit. That on Monday, August 12, 1918, said ordinance was published in the official paper of Detroit, namely, the Detroit Legal News, that under and by the provisions of the charter of the City of Detroit said ordinance, without any further or other act on the part of said City or any of its officers or agents, would become effective one day after such publication, to-wit, on August 13, 1918.

That in and by the provisions of such ordinance especially the provision of Section 4, thereof, as follows:

> "Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for 25 cents."

it was intended to compel the plaintiff company to carry all passengers entering upon its cars on any line in said City for the rates of fare provided for in said ordinance, regardless of the provisions of the existing ordinance, under which plaintiff is entitled to charge a higher rate of fare. And it was expressly intended by reason of the alleged claim on behalf of the said City of Detroit that a large part of the lines operated by the plaintiff company within the limits of the City of Detroit were non-franchise lines, and all passengers entering cars upon said non-franchise lines should be entitled to transfers carrying them over any and all lines of said plaintiff company anywhere within the limits of the City of Detroit, and if the provisions of such ordinance are followed it has such effect.

That the pretended exception contained in Paragraph 5 of said ordinance so adopted by the Common Council of the City of Detroit, at its meeting held August 9, 1918, to-wit:

> "The provisions of this ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the City, except where the same is governed by the provisions of such contract."

is simply colorable and meaningless and intended to be misleading and to create confusion, as it was well known when said ordinance was adopted, as heretofore shown and alleged herein, that it would be impossible for the public to determine upon which lines, or parts of lines, such exception would apply. And said pretended exception was not incorporated in said ordinance in good faith to protect the franchise rights of the plaintiff company on any of its lines, for notwithstanding such provision, the public authorities of the City of Detroit have publicly advised and are still advising, all passengers entering cars of plaintiff company on any of its lines, no matter whether franchise or non-franchise lines, to pay no fare for transportation over such lines, except as expressly provided for in such franchise.

That as a result of such advice on the part of the public authorities of the City of Detroit the movement of the plaintiff company's cars over its lines of railway in the City of Detroit have been interfered with by force. Under the advice of the direct representatives of the City of Detroit, passengers entering cars have been advised not to pay the fare established by the plaintiff company as hereinbefore

set forth, but only to pay fares as provided for in such ordinance. That they have encouraged and incited the people to riot and destroy the property of the plaintiff, that the people have thrown bricks, stones, and other missiles through the windows of cars, intimidating and insulting the employees of the plaintiff company operating such cars, and in many cases throwing such cars from the tracks and over-turning them upon the streets, and generally creating conditions of riot throughout the City of Detroit.

That where the employees of the plaintiff company operating such cars have undertaken peaceably to enforce the collection of fares established by the plaintiff company by stopping of cars in which passengers refuse to pay such fares and only tender the fares specified in said ordinance, the police authorities of the city, acting under the directions of the Mayor, have arrested employees of the plaintiff company operating such cars, removing them therefrom, and by such action incited the mobs that were attracted by the excitement to assault the employees of the company, and destroy its property.

That it is the intention and purpose of the Mayor and Common Council of the City of Detroit when said ordinance becomes effective, on August 13, 1918, to forcibly enforce its provisions as to collection of rates of fare in accordance with the instructions herein set forth, and to prevent the plaintiff company from collecting reasonable rates of fare to provide reasonable compensation for the service it is rendering and must continue to render the people of the City of Detroit, and to prevent the plaintiff company from enforcing the provisions of the unexpired franchise hereinbefore set forth.

That the enforcement of the provisions of the ordinance adopted August 9, 1918, would impair the obligations of contracts existing between the plaintiff company and the several municipalities granting it the franchises and rights hereinbefore set forth, being Exhibits "A" to "S" inclusive, the direct and intended effect of such ordinance being to reduce the fare which plaintiff company is now entitled to receive under its said several grants and contracts and also to impose illegal transfers upon it, and compel the plaintiff company to bear many persons long distances on all lines or routes of the plaintiff's street railway operated by it within the City of Detroit, without receiving any consideration therefor, contrary to the terms of the grants, contracts, privileges and franchises hereinbefore referred to, all of which matters and things plaintiff company alleges

are against their just rights, and contrary to equity and good conscience, and the constitutional right of the plaintiff to an unimpaired enjoyment of its several grants, contract rights and privileges.

That such impairment of plaintiff company's rights under said several grants, contracts and franchises is a direct violation of the provisions of Section 10, Article 1, of the Constitution of the United States.

34. That as hereinbefore alleged, the value of the physical property of the plaintiff company necessarily employed in operating its street railways within the City of Detroit to render the people of the City of Detroit reasonable service for their requirements is $33,523,423.00.

35. That the gross revenues of the plaintiff company in connection with the operation of the company's properties within the so-called one fare zone in the City of Detroit from January 1, to July 1, 1918, amounted to $6,240,-252.96. That by reason of the increase of wages of employees and other burdens imposed by the award of the United States War Labor Board, a copy of which was hereinbefore set forth, the operating and other expenses of the plaintiff company during such period would have been as follows:

| | |
|---|---|
| Operating expenses as per books | $4,725,678.72 |
| Taxes | 276,772.84 |
| Increase in payrolls necessary to give effect to the award of the War Labor Board, together with the proportionate increase to employees in other departments | 944,997.65 |
| Depreciation | 249,230.92 |
| Total | $6,196,680.13 |

leaving a balance $43,572.83 before providing for any return upon the investment of the plaintiff company necessarily used to serve the public within the limits of the City of Detroit.

Exhibit 600, attached hereto, and made a part hereof, to which reference is hereby made, is a correct exhibit of what the financial situation of the plaintiff company, with reference to its earnings and expenses had the award of the War Labor Board and other matters indicated in said exhibit been enforced from January 1, 1918, to July 1, 1918.

That the plaintiff company has caused to be made a careful analysis and calculation of the effect that the application of the provisions of said ordinance enacted August 9, 1918, upon its earnings during the period named, if the provision of such ordinance had been in effect between January 1 and July 1, 1918.

fact to be that had the provision of such ordinance been in effect covering the period named, January 1 to July 1, 1918, the gross revenue of the company would have been $5,545,344.03, instead of $6,240,252.96, its actual revenue. Its operating expenses during the said period would have been $4,763,738.99, taxes $276,772.84, increase in labor cost $952,608.59, depreciation $251,907.12, a total of $6,245,-027.54, creating a deficiency in the gross revenue of the company as compared with its expenses as above outlined of $699,683.51, without making any provision whatever for any return upon the value of plaintiff company's property employed in conducting such service.

That Exhibit 500 attached hereto and made a part hereof, to which reference is hereby made, is a true exhibit of what the financial situation of the company would have been as to revenues and expenditures had the provisions of said ordinance, adopted August 9, 1918, been effective January 1 to July 1, 1918, upon the business actually conducted by the plaintiff company during that period.

37. That making provision for reasonable compensation to the company upon the value of its physical property employed in performing the service that was rendered, namely, $33,523,423.00, and assuming six per cent per annum to be a minimum allowance for a reasonable return upon the value of the physical property of the plaintiff company employed in the conduct of such business during said period, the deficit referred to, $699,683.51, would be increased by $1,005,702.64, or would have created a total deficit of $1,705,386.15.

38. That owing to the removal from the city of large numbers of the people who were accustomed to use the service of plaintiff company's street railways, on account of being drafted into military service and from other causes, there has been for the past six months a gradual reduction in the revenues of the plaintiff company for the carriage of passengers over the lines of the plaintiff company, amounting to a reduction in such revenue over the six months period from January 1st, 1918, to July 1st, 1918, of sixteen and one-half per cent as compared with the like period for the year 1917.

That said reduction of revenue has been gradual and steady during each month of said six months period, and from such experience the plaintiff alleges that such reduction of revenue is likely to continue to increase during the months to follow; and that in fact for the period of six months, July 1st to January 1st, it is confidently believed by the officers of the plaintiff company, based upon such experience, and plaintiff therefore alleges, that the revenue of the company for the six months period, July 1st, 1918, to January 1st, 1919, will be less than the revenue for the period, January 1st, 1918, to July 1st, 1918.

39. That upon full consideration of the conditions existing, plaintiff finds and alleges that even the rates established by it, effective as of August 8th, 1918, would not provide, if allowed to be continued in force, reasonable compensation for the service rendered by the company, having in view making provision for expense of operation, maintenance, etc., and a reasonable return upon the value of the company's investment in the property necessary to be employed in the conduct of its business within said City of Detroit.

40. That the enforcement of the provisions of the ordinance of August 9, 1918, as hereinbefore alleged, will create a deficit in the revenues of the company, for the period July 1st, 1918, to January 1st, 1919, which will amount to at least One Million five hundred thousand dollars less than the amount required to provide the plaintiff company reasonable compensation for the service it is required to make, to wit, to provide for operating expenses, taxes, maintenance and depreciation, and a reasonable return calculated at six per cent upon the value of the property of the company employed in the conduct of said business. Plaintiff therefore alleges that the enforcement of the provisions of said ordinance will result in the confiscation of its property, and deprive it of its property without due process of law, in contravention of the provisions of the fourteenth amendment of the Constitution of the United States. That such ordinance is therefore invalid, both for the reason that its enforcement would impair the obligations of existing contracts, franchises, etc., as hereinbefore alleged, and the additional reason that it takes the plaintiff's property without due process of law, and the enforcement of the provisions of said ordinance should therefore be perpetually enjoined, and said ordinance declared wholly invalid and of no force and effect.

41. Plaintiff alleges that the matter in dispute between the parties in this suit exceeds the sum of One Million Dollars, exclusive of interest and costs, and arises under the constitution of the United States.

Plaintiff therefore prays:

(a) That the City of Detroit be made a party defendant to this bill of complaint, and required by the process of the court to appear and answer the same, without oath, its answer on oath being expressly waived.

(b) That a temporary restraining order or injunction be granted by the court, restraining and enjoining the City of Detroit, its officers and agents, from enforcing or taking any steps to enforce the provisions of said ordinance adopted August 9, 1918, pending the hearing on the merits of this suit.

(c) That a permanent injunction be granted, perpetually enjoining and restraining the City of Detroit, its officers and agents, from enforcing any of the provisions of said ordinance.

(d) That said ordinance be declared invalid and void for any and all purposes.

(e) That plaintiff have such other and further relief in the premises as may be agreeable to equity and good conscience.

DETROIT UNITED RAILWAY,
By FRANK W. BROOKS,
*President.*

BERNARD F. WEADOCK,
*Attorney for Plaintiff.*
Interurban Bldg., Detroit, Mich.

STEVENSON, CARPENTER, BUTZEL & BACKUS,
DONNELLY, HALLY, LYSTER & MUNRO,
*Of Counsel.*

Eastern District of Michigan }
Wayne County } ss.

On this 12th day of August, A. D. 1918, before the undersigned, a Notary Public in and for said County, personally appeared Frank W. Brooks, who being duly sworn says:

That he is president of the Detroit United Railway and is authorized in its behalf to sign its name to the foregoing bill of complaint.

That he has heard read said bill of complaint and knows the contents thereof; that the same is true as therein stated except as to matters therein stated upon information and belief, and as to such matters he believes them to be true.

William Strite McDowell,
*Notary Public, Oakland County, Mich.*

(Notarial Seal.) My commission expires April 7, 1922.

# EXHIBIT "Y"

## DETROIT UNITED LINES

### COMPARISON OF MATERIALS PRICES AT AUGUST 1, 1914 AND MAY 1, 1918

| Materials | Unit | Prices Aug. 1, '14 | Prices May 1, '18 | Percentage of Increase of 1918 Prices over 1914 Prices |
|---|---|---|---|---|
| Angles Steel | Base Cwt. | $ 1.18 | $ 4.185 | 255% |
| Babbit | Cwt. | 67.76 | 96.50 | 42% |
| Beams—Steel | Cwt. | 1.18 | 4.185 | 255% |
| Bolts—Track | Base Cwt. | 2.23 | 5.085 | 128% |
| Brick—Common | M. ft. | 6.50 | 11.75 | 81% |
| Brick—Paving | M. ft. | 19.50 | 30. to 33. | 67% |
| Brake Shoes—Steel Back | Net Ton | 30.80 | 69.00 | 124% |
| Brake Shoes—Iron Back | Net Ton | 26.80 | 56.50 | 111% |
| Car Bodies—Single Trk. | Each | 1,500.00 | 2,600.00 | 73% |
| Car Bodies—Double Trk. | Each | 2,256.50 | 4,950.00 | 119% |
| Castings—Iron | Cwt. | 3.40 | 5.25 | 54% |
| Cedar Paving Blocks | Sq. Yd. | .45 | .70 | 56% |
| Cement | Bbl. | 1.09 | 2.19 | 109% |
| Channels—Steel | Cwt. | 1.18 | 4.185 | 255% |
| Coal—Hard—for car htg. | Ton | 6.90 | 7.85 | 14% |
| Coal—Soft | Ton | 2.40 | (4.601 Govt. Price) | 91% |
| Coke | Ton | 5.35 | 9.25 | 73% |
| Crock 8"—Sewer | Foot | .1485 | .301 | 103% |
| Clearance Frogs for 7" 91% P.G. Rail | Each | 97.00 | 245.00 | 154% |
| Crushed Stone | Per Ton | .90 | 1.30 | 44% |
| Charcoal | Bushel | .095 | .25 | 163% |
| Ears—Trolley #5756 | Each | .26 | .60 | 131% |
| Fencing | Rod | .40 | .93 | 132% |
| Files 8" Mill Bastard | Each | .69 | 1.71 | 148% |
| Gasoline | Gallon | .125 | .232 | 86% |
| Granite Paving Block | Each | .125 | .125 | .... |
| Gravel | Cu. Yd. | .80 | 1.35 | 69% |
| Horses | Each | 175.00 | 250.00 up | 43% |
| Iron—Bessemer Pig | Gross Ton | 14.00 | 35.20 | 151% |
| Iron #2 Foundry Pig | Gross Ton | 14.75 | 33.00 | 122% |
| Iron—Pittsburgh Bar | Pr. Lb. Base | 1.35 | 4.085 | 203% |
| Kerosene | Gallon | .07 | .125 | 78% |

## EXHIBIT "Y"—(*Continued*)

## DETROIT UNITED LINES

### COMPARISON OF MATERIALS PRICES AT AUGUST 1, 1914 AND MAY 1, 1918

| Materials | Unit | Prices Aug. 1, '14 | Prices May 1, '18 | Percentage of Increase of 1918 Prices over 1914 Prices |
|---|---|---|---|---|
| Lead—Pig | Cwt. | 5.45 | 7.25 | 33% |
| Maple—Hard #2 | M. ft. | 42.00 | 85.00 | 102% |
| Mates for 7" 91 P. G. Rail 200' Radius Motors G. E. 203-4 | Each | 108.00 | 377.00 | 250% |
| Motor Equipment | Set of 4 | 2,053.00 | 4,125.00 | 101% |
| Nails—9-d Wire | Base Cwt. | 1.80 | 4.30 | 139% |
| Oak—White, Plain 2" | M. Ft. | 80.00 | 105.00 | 31% |
| Oil—Lubricating (Auto) | Gallon | .15 | .28 | 87% |
| Oil—Low Pressure Cyl. | Gallon | .19 | .33 | 73% |
| Oil—Linseed | Gallon | .58 | 1.36 | 135% |
| Paint—Enamelastic Body Color D.U.R. Standard Orange | Gallon | 2.75 | 3.50 | 27% |
| Paint—D.U.R. Std. Seat Color | Gallon | 3.00 | 4.00 | 33% |
| Paint—Q.D. Std. Car Body Color D.U.R. Std. Orange | Lb. | .28 | .35 | 25% |
| Paint D.U.R. Std. Roof Paint #668 | Gallon | 1.35 | 2.20 | 63% |
| Paint D.U.R. Std. Bldg. Orange | Gallon | 1.45 | 2.65 | 82% |
| Paint D.U.R. Std. Trim Red | Gallon | 1.25 | 3.10 | 148% |
| Paper—Toilet | Per 100 Rolls | 7.50 | 13.75 | 83% |
| Piling Oak—30' to 40' lengths | Lin. ft. | .12 | .25 | 108% |
| Pine—White #2 | M. ft. | 45.00 | 65.00 | 44% |
| Pine—Yellow #1 | M. ft. | 35.00 | 55.00 | 57% |
| Pipe—Iron #2 Extra Heavy | Foot | .11 | .323 | 193% |
| Poles—Iron | Lb. | 2.45 | 7.50 | 206% |
| Poles—Wood 7" x 30' | Each | 5.60 | 8.20 | 46% |

## EXHIBIT "Y"—(*Continued*)

## DETROIT UNITED LINES

### COMPARISON OF MATERIALS PRICES AT AUGUST 1, 1914 AND MAY 1, 1918

| Materials | Unit | Prices Aug. 1, '14 | Prices May 1, '18 | Percentage of Increase of 1918 Prices over 1914 Prices |
|---|---|---|---|---|
| Posts—Steel Galv. Line | Each | .38 | .59 | 55% |
| Posts—Steel Galv. End | Each | 1.75 | 2.625 | 49% |
| Posts—Steel Galv. Corner | Each | 2.45 | 3.375 | 38% |
| Rail—7" Guard | Ton | 38.20 | 87.00 | 128% |
| Rail—7" P.G. | Ton | 38.20 | 70.00 | 84% |
| Rail—Tee A.S.C.E. | Gross Ton | 31.92 | 70. to 80. | 135% |
| Rope—Manilla ⅜" | Lb. | .17 | .35 | 106% |
| Salt—Rock | Ton | 3.60 | 6.60 | 83% |
| Sand | Yard | .50 | 1.20 | 140% |
| Shovels #2 Track | Dozen | 5.95 | 10.50 | 76% |
| Spikes | Keg | 4.00 | 8.17 | 104% |
| Sponges—R.I. Sheepswool | Lb. | 2.90 | 5.00 | 72% |
| Spruce 1" | M. ft. | 35.00 | 70.00 | 100% |
| Steel Structural | Cwt. | 1.18 | 4.185 | 255% |
| Switches—Tongue for 7" —91# P.G. Rail 200' Radius | Each | 164.00 | 525.35 | 220% |
| Tape—Friction | Lb. | .19 | .42 | 121% |
| Tees—Steel | Lb. | 1.18 | 4.186 | 255% |
| Ties—Cedar 6x8x8 | Each | .58 | 1.23 | 112% |
| Ties—W.Oak 6x10x6'8" | Each | .867 | 1.83⅓ | 111% |
| Tin—Pig | Lb. | .5059 | 1.05 | 108% |
| Tie Rods | Each | .23 | 1.25 | 443% |
| Waste Wipers | Lb. | .045 | .10 | 122% |
| Wire—Magnet #6 D.C.C. | Lb. | .1605 | .33 | 106% |
| Wire—Trolley 2/0 Round | Lb. | .135 | .269 | 99% |
| Wire—Rubber Covered #8 Flexible | M. ft. | 17.20 | 36.78 | 114% |

## EXHIBIT 600.

## DETROIT UNITED RAILWAY

INCOME ACCOUNT OF THE ONE FARE ZONE OF THE CITY OF DETROIT FOR THE SIX MONTHS ENDING JUNE 30, 1918.

Adjusted in Respect of Increased Wages to Employees.

| | | |
|---|---|---|
| Gross Revenues | | $6,240,252.96 |
| Deduct: | | |
| Operating expenses as per books | $4,725,678.72 | |
| Taxes | 276,772.84 | |
| Increase in Pay Rolls necessary to give effect to award of War Labor Board, together with proportionate increase to employees in other departments | 944,997.65 | |
| Depreciation | 249,230.92 | 6,196,680.13 |
| Balance of Income for the six months' period remaining to be applied towards the payment of interest on the investment | | $ 43,572.83 |

NOTE: Interest at 6 per cent on the physical properties in the one fare zone of the City of Detroit for the six months ending June 30, 1918, amounts to $994,997.83.

## EXHIBIT 500.

### DETROIT UNITED RAILWAY.

INCOME ACCOUNT OF THE LINES OF THE COMPANY LOCATED IN THE CITY OF DETROIT FOR THE SIX MONTHS ENDING JUNE 30, 1918.

Adjusted in respect of the terms of the Ordinance, passed by the City Council of Detroit on August 9, 1918.

| | | |
|---|---|---|
| Gross Revenue..... | | $5,545,344.03 |
| Deduct: | | |
| Operating Expenses ..... | $4,763,738.99 | |
| Taxes ..... | 276,772.84 | |
| Increase in Pay Rolls necessary to give effect to award of War Labor Board, together with proportionate increase to employees in other departments ..... | 952,608.59 | |
| Depreciation ..... | 251,907.12 | 6,245,027.54 |
| Deficit before considering interest charges or other return on the investment.... | | $ 699,683.51 |

NOTE: Interest at 6 per cent on the value of the physical properties in the City of Detroit would amount for the six months ending June 30, 1918, to $1,005,702.64.

# EXHIBIT ONE

## A to T

## EXHIBIT "A-1"

## ORIGINAL ORDINANCE TO DETROIT CITY RAILWAY.

(Approved November 24, 1862).

An Ordinance to permit certain persons to establish and locate street railways in and through the streets of the City of Detroit.

It is hereby ordained by the People of the City of Detroit:

Whereas, Cornelius S. Bushnell, John A. Griswold, Nehemiah D. Sperry, Eben N. Wilcox, their associates, successors and assigns, propose to organize as a body politic and corporate, under a charter from the Legislature of Michigan, or under the "Act to Provide for the Construction of Train Railways," approved February 13, 1855 (Laws of 1855, p. 338), and act or acts amendatory thereto, for the purpose of constructing and operating in and through the streets of the City of Detroit, city or street railways; therefore,

Be it ordained by the Common Council of the City of Detroit:

Section 1. That consent, permission and authority is hereby given, granted, and duly vested in Eben N. Wilcox, and his associates, who may be approved by the council, their successors and assigns, organized into a corporation, under the laws of the State of Michigan, as aforesaid, to lay a single or double track for a railway with all the necessary and convenient tracks for turnouts, side tracks, and switches, in and along the course the streets of, and bridges in the City of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance. (As amended December 27, 1862. No. 2).

Sec. 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided, on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot,

Grand River and Brush or Beaubien streets; and from Jefferson avenue, through Brush or Beaubien streets, to Atwater street; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street; and through Fort street to the western limits of the city; and through such other streets and avenues in said city, as may, from time to time, be fixed and determined by vote of the Common Council of the said City of Detroit, and assented to, in writing, by said corporation, organized as provided in section first of this ordinance; *And Provided,* The corporation does not assent, in writing, within thirty days after the passage of said resolution of the Common Council, ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track or rails already laid, at their own cost and expense; *Provided Always,* That the railways on Grand River street, Gratiot street, and Michigan avenue shall each run into and connect with the Woodward avenue railways, in such direction that said railways shall be continued down to, and from, each of them, one continuous route to Jefferson avenue; *Provided Always,* That said railway down Gratiot street may be continued to Woodward avenue, through State street, or through Randolph street, and Monroe avenue, and the Campus Martius, as the grantees, or their assigns, under this ordinance, may elect. (As amended January 12, 1863. No. 3).

Sec. 3. The railways through all the streets shall be laid in the center thereof, if on a single track, and if on a double track, the inside rail of each track shall be laid a sufficient distance from the center of the street to enable two cars to pass on opposite tracks, and leave a space between of at least eighteen inches, and the gauge of the track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels; *Provided, However,* That where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first; *And, Provided Further,* That in all streets which are not paved, or where plank roads are laid, the tracks of said railways may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and

place cars thereon for public use, they may at any time thereafter build a second track, so that they do not interrupt the running of their cars on the first completed track; *Provided,* The consent of the Common Council is first obtained. (As amended January 11, 1875. No. 20).

Sec. 4. The tracks of said railways shall be laid of such rails as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof, as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets, or parts of streets, which are not paved, the rails shall be laid in such manner, as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city engineer. The grantees and their assigns, shall be required to keep the surface of the streets, inside the rails, and for two feet four inches outside thereof, in good order and repair, and all snow, ice, dirt and filth cleared and removed from the same, at the expense of the grantees; *Provided, However,* That upon the paved portions of said street, the materials for repaving shall be supplied at the expense of the city. (As amended January 12, 1863. No. 3).

Sec. 5. The routes of all said railways shall commence in the Woodward avenue road, at Campus Martius; from thence running on their several courses to the outer limits of the city; *Provided,* That in collecting fare, those portions between Atwater through Brush or Beaubien streets, and through Woodward avenue to Jefferson avenue, and between Brush and Beaubien or Third streets, on Jefferson avenue and Woodbridge street, shall be respectively deemed to belong to either of the above routes, any portion of which is then being traveled continuously by any one passenger at the same time shall pay only one fare. (As amended January 12, 1863. No. 3).

Sec. 6. Said railways on Woodward avenue, or Witherell street to part lot sixty-two, through Jefferson avenue to the eastern limits, and through Jefferson avenue to Woodbridge, through Woodbridge to Third, and up to Fort, and through Fort street to the western limits of the city, shall be completed within six months from the thirty-first day of March, A. D. 1863; and through Gratiot street to the easterly line of the B. Chapaton farm, shall be com-

pleted within three years from and after the thirty-first day of March, A. D. 1863; and through Grand River to the easterly line of the Woodbridge farm; through Michigan avenue to Thompson street, shall be completed within two years from and after the thirty-first day of March, A. D. 1863; and the remainder thereof at such times as the public necessity may require; *Provided,* That no such railway shall be required to be laid through any part of such routes, which shall not be worked up to the established grade thereof, until the city shall have completed such work.

Sec. 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require and the common council shall prescribe; *Provided Always,* That said common council will not require them to run regular cars oftener than once in twenty minutes during fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and twelve hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage, and the cars and carriages for that purpose shall be of the best style in use on such railways; *Provided,* That other cars and carriages may be used for cleaning said railway tracks from obstructions by snow or otherwise.

Sec. 8. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes; *Provided,* Cars so chartered shall not be considered regular cars, within the meaning of the preceding section.

Sec. 9. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

Sec. 10. No car shall be allowed to stop on a crosswalk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

Sec. 11. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

Sec. 12. The grantees, or their assigns, shall employ careful, sober, and prudent agents, conductors and drivers, to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors, and drivers, to keep vigilant watch for all trains, carriages, or persons on foot, and especially children, either upon the track or moving towards it; at the first appearance of danger to such teams, carriages, footmen, or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

Sec. 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

Sec. 14. Conductors shall announce to the passengers the names of the principal squares and streets, as the cars reach them.

Sec. 15. The cars shall, at all times, be entitled to the track, and any vehicles upon the track of said railways shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicle refusing to do so, shall be liable to a fine not exceeding five dollars, on conviction before the Recorder's Court of said City of Detroit; and costs of prosecution shall not be at the expense of the city.

Sec. 16. The cars, after sunset, shall be provided with colored signal lights, a red light in front and a green light in the rear.

Sec. 17. Whenever gas or water pipes, or sewers, are now laid in the street herein specified, and through which railways are to pass, the said railways must be laid down and maintained subject to the right now in the city, and the gas company and the sewer and water commissioners, to take up or remove said pipes or sewers, in such a manner as not unnecessarily to damage or injure such railways or their use, without claim against the city, gas company, or sewer or water commissioners; and the common council expressly reserves to itself the right hereafter to lay down, or permit to be laid down, and repaired in said streets, gas or water pipes, and sewers, whenever the public or private convenience may require; the said gas or water companies, or private individuals, who shall take up pavement for the purposes aforesaid, being already required, as by the present city ordinance, to restore the pavement in the streets to its former condition.

Sec. 18. If said grantees, or their assigns, shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, then the rights and privileges

herein granted shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof, provided the council does not extend the time; *Provided,* That if said grantees shall be delayed by the order or injunction of any court, and said order or injunction shall not be obtained at the instance or by the contrivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance. (As amended December 27, 1862. No. 2).

Sec. 19. It is hereby reserved to the common council of the City of Detroit, the right to make such further rules, orders or regulations, as may from time to time be deemed necessary to protect the interest, safety, welfare, or accommodation of the public, in relation to said railways.

Sec. 20. The powers and privileges conferred by the provisions of this ordinance, shall be limited to thirty years, from and after the date of its passage.

Sec. 21. Said grantees shall, on or before the tenth day of January, A. D. 1863, deposit with the controller of said city the sum of five thousand dollars in money, or in United States stocks, or in Treasury notes, bearing seven and three-tenths per cent interest, which deposit shall be security for the completion, by said grantees, of the lines of railway which they are required to construct and complete, on or before the first day of October, A. D. 1863; and if the said railways shall not then be completed, the sum so deposited shall be forfeited to the city; *Provided, However,* That if said grantees, or their assigns, cannot procure the requisite amount of rail of the Philadelphia, or other suitable pattern, to build said railway, within the time specified, with a suitable and competent force, then the time shall be extended until such rail can be obtained, and laid with a suitable and competent force; *And, Provided, Further,* That the time for the completion of said roads be extended not to exceed nine months, upon good and sufficient reasons being given that the iron rails cannot be procured. (As amended January 12, 1863. No. 3).

Sec. 22. The said grantees, and their assigns, shall pay to the Treasurer of the City of Detroit, annually, fifteen dollars on each and every passenger, or other car, excepting only those cars used for cleaning the track on said roads, to be collected as a license, for the use of the city, after the term of five years from and after this date.

Sec. 23. Whenever the said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said act of the Legislature of the State of Michigan, or charter thereof, all the powers and privileges granted and conferred to and upon them, by this ordinance, shall be given, granted, and duly vested in said corporation, without any further action, consent, permission, or authority of the common council whatever.

Sec. 24. All ordinances, or parts of ordinances, heretofore made, ordained, and passed, inconsistent with the provisions of this ordinance, are hereby repealed.

Sec. 25. Any wilful violation of, or failures to comply with the provisions of this ordinance, by said railway company, or by any agent, conductor, driver, or any person in the employ of said company, shall be punished by a fine not to exceed one hundred dollars and costs; and in the imposition of any such fine and costs, the court may make a further sentence that the offender be committed to the county jail or to the Detroit House of Correction, until the payment thereof, for any period of time not exceeding six months. (Added March 29, 1864. No. 7).

(Approved August 19, 1863. No. 4.)

Sec. 26. Permission is hereby given to the Detroit Railway to build its road and track on Michigan avenue, from Woodward avenue to Fourth street, and on Gratiot street from Woodward avenue to Russell street, instead and in lieu of upon Third street and Fort street, as provided by the ordinance approved November 24, 1862, and the amendments thereto (and such building on Michigan avenue and Gratiot street, together with Jefferson and Woodward avenues, shall be deemed a compliance with the condition of deposit mentioned in section twenty-one of said ordinance).

Sec. 27. As a condition of the acceptance of this permission, the said Detroit City Railway may and shall complete its road and track on Fort street, Michigan avenue and Gratiot street, as provided by the aforesaid ordinances, by the first day of October, 1864; and failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed.

Sec. 28. On Woodward avenue, Gratiot street, and Michigan avenue, beyond the pavement, the said railway may build its track a sufficient distance from the plank road in those streets, respectively, to leave the grade track of said plank road clear, and allow teams and vehicles to pass between said tracks and said plank road; and upon Michigan avenue and Gratiot street, beyond the pavement

said railway may construct its track with the "T" rail, which is used for street railways, and weighs not less than thirty-three pounds to the yard.

Sec. 29. The said railway is hereby authorized to extend its track, and run its cars, through Third street, southerly from Woodbridge street to the dock, and to lay the said track on such part of said street, westerly of the center, as they shall agree upon with the Michigan Central Railroad Company.

Sec. 30. The tracks upon Jefferson avenue, Woodward avenue, Michigan avenue, and Gratiot street shall each be considered and run as one route, and subject its passengers to the payment of a single fare each; *Provided, However,* That all cars running north of Jefferson avenue shall run to and from Jefferson avenue, and that portion of Woodward avenue between Jefferson avenue and the routes intersecting Woodward avenue shall be considered as making a portion of each of said routes, respectively.

Sec. 31. The Detroit City Railway, upon obtaining the consent of the owners of real estate on Elmwood avenue, or such real estate owners as are affected thereby, may, and is hereby authorized to build a track from its present track on Jefferson to Elmwood Cemetery, and run its cars thereon at such times as will accommodate the public; *Provided, However,* No person shall be charged more than one cent either way on this track; and said railway are also authorized to run a track and their cars to Mount Elliott Cemetery, along Mount Elliott avenue, and charge the same rate of fare as to the said Elmwood Cemetery.

(Approved October 7, 1863. No. 5.)

Sec. 32. The Detroit City Railway is hereby authorized to build its track and run its cars, from its track on Jefferson avenue, upon and along Randolph street, southerly to Atwater street, and thence along Atwater street, easterly to Brush street; and, as said track approaches the Detroit and Milwaukee depot, the said railway may turn the same on to the southerly side of said Atwater street so as to run said cars up to the sidewalk in front of the office buildings of the Detroit and Milwaukee Railway Company.

(Approved January 4, 1864. No. 6.)

Sec. 33. Permission is hereby given to the Detroit City Railway to build its road and track on and through Fort street from Third street to Woodward avenue, instead and in lieu of on and through Third street, from Fort street to Woodbridge street, as now provided by the ordinance reg-

ulating the building of the tracks of said railway, in which case said railway will be relieved of its obligations to build through Third street as aforesaid.

Sec. 34. Permission is also hereby given to said railway to build its road and track along and through Stanton street, from Fort street to the River road, and thence on and through the River road to the westerly limits of the city; and such building shall relieve said railway from its obligation to build its road and track from said Stanton street, along said Fort street, to said westerly limits of the city; and the said railway is hereby authorized to build its track on Fort street from the railroad crossing, through Stanton street and River road, to the city limits, with "T" rail, similar and of equal weight to that used on Michigan avenue.

Sec. 35. The road and track of said railway, from said westerly limits, through said River road, Stanton street and Fort street, and from Fort street along Woodward avenue to Jefferson avenue, shall then form one route along which said railway shall run its cars continuously, and on which it shall be entitled to receive one fare for each passenger.

(Approved October 8, 1864. No. 8.)

Sec. 36. The Detroit City Railway Company is authorized to connect their car depot on Second street with their main track to said car house, either through Second street or from Third street, through the alley, between Jefferson avenue and Front street. Said company is also authorized to connect their car depot and stables on St Antoine street with their tracks on Jefferson avenue, by constructing a branch track from St. Antoine street to said car depot and stables; such branch track to be a single track only, and to intersect said Jefferson avenue track at right angles, and by means of turntables, in the same manner as the tracks of said company connect with each other at the intersection of Jefferson and Woodward avenues. (As amended December 15, 1874. No. 373.)

Sec. 37. The time for completing the road of said company, on Gratiot street, is hereby extended to November 1, 1865; *Provided, However,* That said company shall extend their tracks as far as Chene street on or before the twentieth day of November next.

Sec. 38. The track of said company shall be laid on that part of Gratiot street which is occupied by the Plank Road Company, in such position as shall be agreed on between the Railway and Plank Road Companies; *Provided, However,* That unless the line agreed on shall be along the center of said street such agreement shall be first reported to and approved by the council.

(Passed January 11, 1875. No. 20.)

Sec. 39. The Detroit City Railway Company is hereby authorized to construct a second track on Woodward avenue, in accordance with the provisions of the ordinance above referred to, being section 3 of this chapter.

(Approved July 8, 1873. No. 17.)

Sec. 40. Permission, consent, and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track, on, and throughout Jefferson avenue in the City of Detroit; *Provided, Expressly,* That if hereafter the pavement on said avenue shall be extended, or said avenue shall be ordered repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade, and pave or repave all the portion of said avenue lying within the rails of each track and between the tracks, and shall also keep their portion of the said tracks and two feet nine inches outside the outer rail of each track in proper condition and repair, and the two inner rails shall be laid equidistant from the center of the street; said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving, grading, excavating, removing of earth, and all other necessary work, and the whole shall be done in a manner satisfactory to the common council.

(Approved August 20, 1877. No. 26.)

Sec. 41. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on, and through Michigan avenue, from Woodward avenue to Thirteenth-and-a-half street, in the City of Detroit. It is, however, expressly understood and provided; That, as said avenue has already been ordered repaved, or if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade, and pave, or repave all the portion of said avenue lying within the rails of each track, and between the tracks, and shall also keep their portion of the said tracks, and the space of two feet and nine inches outside the other rail of each track, in proper condition and repair; and the two inner rails of its said tracks shall be laid equidistant from the center of the street. Said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, re-

paving, and material for the same, grading, excavating, removing of earth, and all other necessary work, and the whole shall be done in a manner satisfactory to the common council.

Sec. 42. Any provision or condition in the ordinance creating said company, or of any ordinances amendatory thereof, contravening the provisions of this amendment are hereby repealed.

## EXHIBIT "A-2"

An Ordinance authorizing the "Detroit and Grand Trunk Junction Street Railway" to construct and operate its railroad.

It is hereby ordained by the Common Council of Detroit:

Section 1. Consent, permission, and authority are hereby given and granted to the "Detroit and Grand Trunk Junction Street Railway," a corporation organized under the laws of the State of Michigan in regard to street railway companies, to construct and operate its railway from Mt. Elliott avenue through Congress, Larned, Randolph streets, and Joseph Campau avenue, Seventh, Baker, and Twenty-fourth streets, and the Dix road to the westerly limits of the city. A diagram of the route of said railway, within two months from the passage hereof, shall be filed with the City Clerk and Surveyor. Provided, That should any part of the territory west of the city limits and through which the track of said road shall be laid, be added to the corporation, then the rights hereby granted shall include and cover so much of the said tracks as shall be in such territory, and be subject to all the provisions and conditions of this ordinance.

Sec. 2. Said company is authorized to lay, use and maintain a single track, with necessary and convenient turnouts, side-tracks, and switches in and along the course of the streets mentioned in the preceding section, except on Congress and Larned streets, above Randolph, which shall be a single track only, and operate thereon street railway cars during the term hereinafter prescribed, subject to all the conditions and restrictions of this ordinance.

Such tracks shall be laid with the inside of each rail two feet four and one-fourth inches from the center of

the street. Said rails shall be of the same style and shape as those now in use by the city street railways, and shall be laid four feet eight and one-eighth inches apart, with the upper surface of the rail flush with the surface of the street, and in such a manner as not to interfere with ordinary travel, and particularly of wheeled vehicles, and shall conform to the grade of the street as existing or hereafter altered.

Sec. 3. If it shall become necessary to relay said rails, the same shall be done at the expense of the grantee, and in all streets or parts of streets which are not paved, the rails shall be laid in such a manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the common council. The grantee and its assigns shall keep the surface of the streets, from curb to curb, in good order and repair, and all snow, ice, dirt and filth cleaned and removed from such portion of the streets at the expense of the grantee, in such a manner as not to obstruct travel in any part of the street. And said company shall fully indemnify and save harmless the city from any and all claims and damages for which it might be made or become liable to pay by reason of the construction, making, or operating of said railway, or the giving or allowing of the license, right, and privileges hereby granted.

Sec. 4. Said railway shall be laid down subject to the right of the city, or of any gas company, or the water or sewer commissioners, to lay down, take up, change, or remove any works of any kind on or beneath the surface of the streets, without any claim for damages on the part of said railway.

Sec. 5. The cars to be used on said railway shall be run and drawn by animals only, at a speed not exceeding six miles an hour, and as often as the common council shall, by resolution, prescribe. The cars and carriages used by said grantee shall be of the best style in use on street railways in the City of Detroit, and they shall not be used for any other purpose than to transport passengers and their ordinary baggage; Provided, That other cars may be used for cleaning said railway tracks from obstructions by snow or otherwise.

Sec. 6. The trains on said railway shall at all times be entitled to the track, and vehicles on the track shall turn out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing so to do, shall be liable to a fine as provided in Section 16 of this ordinance.

Sec. 7. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting cars together. All cars used upon said railroad after sunset shall be provided with signal light—red in front and green in rear.

Sec. 8. No car, or the horses thereto attached, shall be allowed to stop at a cross-walk, or in front of any intersecting street, except to avoid collisions and to prevent danger to persons or property in the street, and conductors shall not allow any person to enter or leave the cars while in motion. Nor shall any car be allowed to remain or stop at the intersection of any street so as to obstruct the free and ordinary use of it. When any car is required to be stopped at the intersection of any street to receive or leave passengers, it shall be so stopped as to leave the rear platform slightly over the crossing.

Sec. 9. The grantee and its assigns shall employ careful agents, conductors and drivers to take charge of the cars while on the road, and it shall be the duty of all such agents, conductors and drivers to keep vigilant watch for all trains, carriages and persons on foot, especially children, either upon the tracks or moving toward it. At the first appearance of danger to such teams, carriages, footmen, children, or other obstructions, the car shall be stopped in the shortest time and space possible, and notice bells shall be attached to all horses drawing such cars. Conductor shall announce to the passengers the names of the principal squares and streets as the cars reach them; and all cars shall be required to come to a full stop before coming to the Michigan Central Railroad crossing.

Sec. 10. If hereafter the pavement on said streets, or on any street occupied by said company, shall be extended or any such street shall be ordered repaved, the said grantee shall contemporaneously with the paving or repaving of said street, at its own expense, excavate, grade and pave or repave with the same material, or with material and in a manner satisfactory to the common council, all the portion of the street or streets which lies within their track or any switches or turn-outs placed by them, and two feet nine inches on either side thereof, such expenses to include the cost of paving, repaving, grading, excavating, removing of earth, and all expenses necessary for paving or repaving the street to the extent above specified, and at all times keep or cause to be kept in good order or repair such pavement within said track and distance on either side thereof.

Sec. 11. Said railway shall provide and keep in repair at all times such substantial and permanent approaches to its track at all street crossings on all streets not paved, that teams, vehicles, and persons on foot will be enabled to cross the track conveniently at all times.

Sec. 12. Passengers conveyed upon said railway in said city shall be charged no more than five cents for any distance. The said grantee and its assigns shall pay to the Treasurer of the City of Detroit annually twenty-five dollars on each and every two-horse car, and twelve dollars and fifty cents on each and every one-horse car owned by said grantee or assigns, excepting only those cars used expressly for constructing, repairing, and cleaning the track of said road, to be collected as a license fee for the use of the city, after said track shall be laid the length of one mile. And the secretary of said grantee shall, on the first Monday of July of each and every year during the life of this ordinance, make and deliver to the Treasurer of the City of Detroit a statement of the gross earnings of said Detroit and Grand Trunk Junction Street Railway, the same to be signed and sworn to by said secretary, and the said grantees and their assigns shall pay to the Treasurer of the City of Detroit annually a special tax on gross earnings of said street railway as follows: The first five years, from the acceptance of this ordinance to be free; the second five years one per cent, and for the balance of the life of the ordinance three per cent.

Sec. 13. It is hereby reserved to the common council of the City of Detroit, the right to make amendments to this grant and ordinance, and such further rules, orders, or regulations as may from time to time be deemed by the comon council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

Sec. 14. This ordinance shall be void and of no effect unless the grantee shall, within one month from the date of the approval thereof, notify the common council in writing of its acceptance of, and its agreement to the provisions of this ordinance, and shall, within two months thereafter, commence the work of constructing and building said railway, and complete the same as soon as the public necessity requires; and the common council shall be the judge of such necessity.

Sec. 15. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after its passage.

Sec. 16. Any wilful violation of, or failure to comply with, the provisions of this ordinance by said Detroit and

Grand Trunk Junction Street Railway, or by any agent, conductor, driver, or any person in the employ of said grantee, or if the driver of any vehicle shall refuse to turn out as required by Section 6, the same shall be punished by a fine not to exceed one hundred dollars and costs, and in the imposition of any such fine and costs the court may make a further sentence that the offender, except the grantee, be committed to the county jail, or the Detroit House of Correction, until the payment thereof, for any period of time not exceeding six months.

## EXHIBIT "A-3."

### THE CENTRAL MARKET, CASS AVENUE AND THIRD STREET RAILWAY.

(Ordinance passed notwithstanding Mayor's veto, June 13, 1873).

An ordinance authorizing the "Central Market, Cass Avenue and Third Street Railway" to construct and operate its railroad.

It is hereby ordained by the Common Council of the City of Detroit:

Section 1. Consent, permission, and authority are hereby given and granted to the "Central Market, Cass Avenue and Third Street Railway," a corporation organized under the laws of the State of Michigan in regard to tram railways to construct and operate its railway from Jefferson avenue through Bates, Farmer, Gratiot, State and Cass street, Cass avenue, Ledyard and Third streets, to the Holden road; also through Third street, south from Ledyard street to Woodbridge street; also through Larned street from Third street to Bates street, and through Griswold street from Larned street to State street. A diagram of the route of said railway, within two months of the passage hereof, shall be filed with the City Clerk and City Engineer. Provided, That should any part of the territory west of the City limits and through which the track of said road shall be laid, be added to the corporation, then the rights hereby granted shall include and cover so much of the said track as shall be in said territory, and be subject to all the provisions and conditions of this ordinance. (As amended by ordinance approved October 14, 1876.)

Sec. 2. Said Company is authorized to lay, use and maintain a single track, with necessary and convenient

turnouts, sidetracks, and switches in and along the course of the streets mentioned in the preceding section, and to operate thereon street railway cars during the term hereinafter prescribed, subject to all the conditions and restrictions of this ordinance.

Such track shall be laid with the inside of each rail two feet four and one-fourth inches from the center of the street. Said rails shall be of the same style and shape as those now in use by the city street railways and shall be laid four feet eight and one-half inches apart, with the upper surface of the rail flush with the surface of the street, and in such a manner as not to interfere with ordinary travel, and particularly if wheeled vehicles, and shall conform to the grade of the streets as existing or hereafter altered.

Sec. 3. If it shall become necessary to relay said rails the same shall be done at the expense of the grantee; and in all streets or parts of streets which are not paved, the rails shall be laid in such a manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the Common Council. The grantee, and its assigns shall keep the surface of the streets from curb to curb in good order and repair, and all snow, ice, dirt and filth cleaned and removed from such portions of the street at the expense of the grantee in such manner as not to obstruct travel in any part of the street. And said company shall fully indemnify and save harmless the city from any and all claims and damages for which it might be made or become liable to pay by reason of the construction, making or operating of said railway, or the giving and allowing of the license, right and privilege hereby granted.

Sec. 4. Said railway shall be laid down subject to the right of the city, or of any gas company, or the water or sewer commissioners, to lay down, take up, change or remove any works of any kind on or beneath the surface of the streets without any claim for damages on the part of said railway.

Sec. 5. The cars to be used on said railway shall be run and drawn by animals only, at a speed not exceeding six miles an hour, and as often as the Common Council shall by resolution prescribe. Provided, The cars and carriages used by said grantee shall be of the best style in use on street railways in the City of Detroit, and they shall not be used for any other purpose than to transport passengers and their ordinary baggage. Provided, That other cars may be used for cleaning said railway track from obstructions by snow or otherwise.

Sec. 6. The trains on said railway shall at all times be entitled to the track, and vehicles on the track shall turn

out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing so to do shall be liable to a fine as provided in section 16 of this ordinance.

Sec. 7. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting cars together. All cars used upon said railroad after sunset shall be provided with signal lights, red in front and green in rear.

Sec. 8. No car, or the horses thereto attached, shall be allowed to stop on a crosswalk or in front of any intersecting street, except to avoid collisions and to prevent danger to persons or property in the streets; and drivers shall not allow any person to enter or leave the cars while in motion. Nor shall any car be allowed to remain or stop at the intersection of any street so as to obstruct the free and ordinary use of it. When any car is required to be stopped at the intersection of any street to receive or leave passengers, it shall be stopped as to leave the rear platform slightly over the crossing.

Sec. 9. The grantee and its assigns shall employ careful, sober and prudent agents and drivers to take charge of the cars while on the road, and it shall be the duty of all such agents and drivers to keep vigilant watch for all trains, carriages and persons on foot, especially children, either upon the track or moving towards it. At the first appearance of danger to such teams, carriages, footmen, children or other obstructions, the cars shall be stopped in the shortest time and space possible, and notice-bells shall be attached to all horses drawing such cars. Drivers shall announce to the passengers the names of the principal squares and streets as the cars reach them.

Sec. 10. If hereafter the pavements on said streets or any street occupied by said company, shall be extended, or any such street shall be ordered repaved, the said grantee shall contemporaneously with the paving or repaving of said streets, at its own expense excavate, grade and pave, or repave, with the same material, or with material and in a manner satisfactory to the common council, all the portion of the street or streets which lies within their track or any switches or turnouts, placed by them, and two feet nine inches on either side thereof, such expense to include the cost of paving, repaving, grading, excavating, removing of earth, and all expenses necessary for paving or repaving the street to the extent above specified, and at all times keep or cause to be kept in good order or repair such pavement within said track and distance on either side thereof.

Sec. 11. Said railway shall provide and keep in repair at all times such substantial and permanent approaches to its track at all street crossings on all streets not paved, that teams, vehicles and persons on foot will be entitled to cross the track conveniently at all times.

Sec. 12. Passengers conveyed upon said railway in said city shall be charged no more than five cents for any distance. The said grantee and its assign shall pay to the Treasurer of the City of Detroit annually twenty-five dollars on each and every two-horse car; and twelve dollars and fifty cents on each and every one-horse car owned by said grantee or assign, excepting only those cars used expressly for constructing, repairing and cleaning the track of said road to be collected as a license fee for the use of the city, after said track shall be laid the length of one mile.

And the Secretary of said grantee shall, on the first Monday of January and first Monday of July of each and every year during the life of this ordinance, make and deliver to the Treasurer of the City of Detroit a statement of the gross earnings of said Central Market, Cass Avenue and Third Street Railway, the same to be signed and sworn to by said secretary and the said grantees and their assigns shall pay to the Treasurer of the City of Detroit annually a special tax on gross earnings of said street railway, as follows: The first five years from the acceptance of this ordinance to be free, the second five years one per cent, and for the balance of the life of the ordinance three per cent.

Sec. 13. It is hereby reserved to the common council of the City of Detroit the right to make amendments to this grant and ordinance, and such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

Sec. 14. This ordinance shall be void and of no effect unless the grantee shall, within one month from the date of the approval thereof, notify the common council in writing of its acceptance of, and its agreement to the provisions of this ordinance, and shall, within two months thereafter commence the work of constructing and building said railway, and complete the same to the limits of the city in two years.

Sec. 15. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after its passage.

Sec. 16. Any wilful violation of, or failure to comply with the provisions of this ordinance by said Central Market, Cass Avenue and Third Street Railway, or by any

agent, driver, or any person in the employ of said grantee, or if the driver of any vehicle shall refuse to turn out as required by Section 6, the same shall be punished by a fine not to exceed one hundred dollars and costs, and in the imposition of any such fine and costs the court may make a further sentence that the offender, except the grantee, be committed to the County jail or to the Detroit House of Correction, until the payment thereof, for any period of time not exceeding six months.

## EXHIBIT "A-4"

### ADDITIONAL RIGHT OF WAY AND EXTENSION OF ORIGINAL FRANCHISES.

(Approved November 14, 1879. No. 27.)

*An Ordinance* supplementary to an ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the City of Detroit," approved November 24, 1862, and the amendments thereto and for other purposes.

Section 1. The track of the Detroit City Railway Company's line on Gratiot avenue shall be extended and completed and operated from its present terminus to Chene street, within sixty days from this date; and from Chene street to the city limits within such period as the common council shall by resolution hereafter declare to be necessary.

Sec. 2. The Detroit City Railway Company shall, on or before June 1, 1880, extend, complete, and operate their line on Woodward avenue, from its present terminus on Jefferson avenue, to Atwater street; thence through Atwater street to the Detroit, Grand Haven & Milwaukee depot. And the line on Congress street, heretofore operated by the Detroit & Grand Trunk Junction Street Railway Company, shall also be extended from its present terminus, through Randolph street to Atwater street, which extensions are hereby declared to be additional routes, for the construction and operation of which, under the provisions of the ordinance of November 24, 1862, granted to the City Railway Company, consent and authority is hereby given.

Sec. 3. The ordinances of June 13, 1873, and of June 16, 1875, and all amendments thereto, granting, respectively, to the Detroit Grand Trunk Junction Street Railway Company, and to the Central Market, Cass Avenue and Third Street Railway Company, authority to construct and operate street railways through certain streets of the City of Detroit, are hereby repealed; and the said railways constructed and operated thereunder shall hereafter be subject to and operated under the ordinance approved November 24, 1862, and the amendments thereto, granting to the Detroit City Railway Company certain rights therein set forth.

Sec. 4. On the 1st of July and January in each half year from the 1st of January, 1880, the Detroit City Railway Company shall pay to the Treasurer of the City of Detroit a tax of one per cent during the period of this ordinance, on the gross receipts of the several lines of street railway operated by said company; and the treasurer of said company shall, on or before the beginning of each half year as above mentioned, make and deliver to said Treasurer a sworn statement of such gross receipts. On and after the 1st day of January, 1880, whenever any of the streets through which the line of any of the railways operated by the said company shall run, shall be hereafter ordered to be paved, repaved, or repaired, said company shall furnish all materials, and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which constitutes their roadway or track, and the spaces between the lines of double tracks and all switches, said company shall at all times keep the same clean and in good order and condition; but said company shall have the right to use on the surface of their roadways either cobble stone or some similar durable and proper material to be approved by the common council.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges for paving under existing ordinances. And it is hereby stipulated and agreed that the cars on all lines subject to this ordinance shall be operated as the public convenience may require and the common council order.

Sec. 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty

years from this date. And it is further agreed and stipulated that the running of cars on any street, or any fraction thereof, will be discontinued temporarily on such occasions as the common council may, by resolution from time to time designate, to accommodate public processions or any other like convenience.

Sec. 6. This ordinance shall take immediate effect when written acceptances of the terms thereof are filed in the office of the City Clerk of Detroit by the Detroit City Railway Company, the Detroit and Grand Trunk Junction Street Railway Company, and the Central Market, Cass Avenue, and Third Street Railway Company, or their successors; and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed; and all ordinances and parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

Sec. 7. The right to amend or repeal this ordinance in case of its violation by said company or companies, is expressly reserved.

## EXHIBIT "A-5"

### BRUSH STREET LINE.

(Approved January 5, 1885).

*An Ordinance* supplementary to an ordinance entitled, "An Ordinance to permit certain persons to establish and locate street railways in the City of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, fixing and determining a new street railway route, and authorizing the Detroit City Railway to establish, construct and operate a street railway thereon.

*It Is Hereby Ordained by the People of the City of Detroit:*

Section 1. Subject to all of the provisions and requirements of Chapter 50, of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled an ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City

Railway Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts, and turntables in and through the following streets and avenues of the City of Detroit, and the same to keep, maintain and use, and to operate thereon railway cars in the manner and subject to the conditions herein contained and to all requirements and conditions set forth in the said ordinance, viz: Commencing at a point on Ferry street, adjacent to the Detroit & Milwaukee Junction, running thence along Ferry street to Russell street, thence along Russell street to Farnsworth street, thence along Farnsworth street to Antoine street, thence along Antoine street to Ohio street, thence along Ohio street to Brush street, thence along Brush street to Gratiot street or avenue, and thence over the present track of the Detroit City Railway on Gratiot avenue, Randolph street, Monroe avenue and Woodward avenue to Jefferson avenue.

Sec. 2. The said grantees shall complete said railway and have the same in full operation over the entire route prescribed in Section 1 of this ordinance on or before the first day of December, A. D. 1885, and said grantees shall, on or before the first day of February, deposit with the Controller of said city the sum of five thousand dollars in money or United States stocks or in treasury notes, which said deposit shall be forfeited to the City of Detroit if said railway shall not be constructed and in full operation on the date mentioned; and failure by said company to so construct and operate said railway within the time limited shall also be a forfeiture of the route and rights granted by this ordinance. Upon the completion of said railway as aforesaid, and whenever the same shall be in full operation, the Controller shall refund to said grantees the amounts so deposited as forfeit with him. *Provided*, That should said grantees be prevented from completing said railway by said December 1, 1885, not due to any fault or action of said grantees, then the said grantees may be granted an extension of time within which to so complete said railway.

Sec. 3. It is hereby reserved to the common council of the City of Detroit, the right to make such further rules, orders, or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare, or accommodation of the city and public in relation to said railway.

Sec. 4. This ordinance shall take immediate effect when said Detroit City Railway Company shall have filed with the City Clerk a written acceptance of the same, and shall execute a good and sufficient bond to the City of Detroit in the sum of $50,000 to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed before January 15, 1885.

## EXHIBIT "A-6"

### EAST FORT STREET LINE—CHENE STREET LINE —CASS AVENUE EXTENSION — DOUBLE TRACK IN JEFFERSON AVENUE AND GRATIOT AVENUE LINE—MACK STREET LINE.

(Approved January 3, 1889. No. 57.)

*An Ordinance* supplementary to an ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 24, 1862," and supplementary to an ordinance entitled, "An Ordinance supplementary to an ordinance entitled an ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 24, 1862, and to the amendments thereto, and for other purposes," approved November 14, 1879, and all amendments and supplements thereto.

*It is hereby ordained by the People of the City of Detroit:*

Section 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit for the year 1884 and of amendments thereof and supplements thereto, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled an ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 14, 1879," and all amendments and supplements thereto, the Detroit City Railway is hereby authorized and permitted to lay, construct, use, and operate a street railway with convenient tracks for turn-outs, side-tracks, curves, and switches in and through the following streets and avenues in the City of Detroit, and the same to keep, maintain and use, and to operate thereon street railway cars in the manner and subject to the conditions herein con-

tained, and to all the requirements and conditions set forth in Chapter 98 of the Revised Ordinances of 1884, and in the said ordinance and amendments and supplements thereto, viz:

Commencing at a point on Congress street east where its present track on said Congress street east turns on to Randolph street, connecting herewith, running thence easterly along said Brush street, thence northerly along Brush street to its intersection with Fort street east, thence easterly along said Fort street east to Mt. Elliott avenue, thence along said Mt. Elliott avenue to the Jefferson avenue double track, thence along said Jefferson avenue double track to the easterly limits of the city.

Also to extend its track on Cass avenue from where it now turns on to Ledyard street northerly in, along and through said Cass avenue to the Detroit & Bay City railroad crossing.

Also to extend its double street railway track in, along and through Jefferson avenue from the present easterly terminus of its double track on said Jefferson avenue to the easterly limits of the City of Detroit.

Also to lay, construct, use, and operate an additional track on Gratiot avenue from Monroe avenue to the easterly limits of the City of Detroit, so that a double track may be laid, used, and operated through the entire length of said Gratiot avenue.

Also to lay, construct, use, and operate a single street railway track in, along and through Mack street, from its conjunction with Gratiot avenue in an easterly direction along said Mack street to the city limits.

Also, to connect the tracks on Michigan avenue by suitable extensions and curves with the present track on Monroe avenue, so that cars may be brought through and over the same between the said two streets.

Also, to lay, construct, use, and operate a single street railway track in, along, and through the following streets and avenues, viz: Commencing at a point on Joseph Campau avenue, near the bank of the Detroit river, running thence northerly along said Joseph Campau avenue to its intersection with Atwater street, thence in a westerly direction along Atwater street to its intersection with Chene street, thence in, along, and through Chene street in a northerly direction to the city limits.

Also, permission is hereby granted to the Detroit City Railway, if it shall desire so to do, to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed on the bridge, and approaches thereto, to Belle Isle park, to said park,

with all the privileges and rights which may be granted to any other street railway.

Sec. 2. The track hereby authorized on Congress, Brush, and Fort streets east shall be constructed and in operation within one year from the date of the passage of this ordinance; and cars shall be run thereon often enough to fully accommodate public travel; and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of the passage of this ordinance. The track authorized to be constructed on Joseph Campau avenue, Atwater and Chene streets, shall be constructed and in operation within one year from the date of passage of this ordinance. The double track hereby authorized on Gratiot avenue shall be constructed and in operation to Mt. Elliott avenue within one year from the date of the passage of this ordinance, and to the city limits contemporaneously with the pavement of said Gratiot avenue beyond the present pavement; and the track hereby authorized to be laid on Mack street shall be constructed and in operation within one year from the date of the passage of this ordinance. The track hereby authorized to be laid on Cass avenue shall be constructed within such time as shall be hereafter directed by the common council.

Sec. 3. Permission and authority is hereby given to the said Detroit City Railway to run its cars at a rate of speed not exceeding ten miles an hour, and it is hereby required to run thereon at an average speed of not less then six miles per hour, and whenever it shall deem it advisable, to substitute in lieu of animal power such system of electric or other motive power, except steam, as shall seem best in its judgment, for the purpose of properly and safely conducting its business in said City of Detroit upon any or all of its said lines now in use and operated or hereafter to be in use and operated by said company, said change to be made under the supervision of the Board of Public Works.

Sec. 4. The above mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit City Railway, but the permission and authority hereby given shall be inoperative and void, unless the said Detroit City Railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to-wit:

A. It shall carry passengers from its Cass avenue and Third street, Trumbull avenue, Michigan avenue, and Con-

gress and Baker street lines to any point on the proposed line on Fort street east, or to the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon, to any point on Congress and Baker streets, Michigan avenue, Trumbull avenue and Cass avenue and Third street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau, Atwater and Chene streets shall be entitled to be transferred at Fort street to and conveyed by cars running on the proposed line on Fort street east to any point on said Fort street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue, to be carried to any point on said Gratiot and Michigan avenue lines in one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to said Chene street line and carried to any point thereon in one continuous trip. A passenger paying a single fare of five cents on the Gratiot avenue line shall be entitled to be transferred at Chene street to said Chene street line and to be carried to any point thereon in one continuous trip.

B. A passenger paying a single fare of five cents on the Gratiot avenue line shall be entitled to a continuous ride over said Gratiot avenue line and proposed lines on Chene street and Fort street to the Belle Isle bridge; and from the Belle Isle bridge, in reverse direction, over the Fort street east, Chene street and Gratiot avenue lines for a single fare of five cents for one continuous trip.

C. It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot avenue lines, either by transfer of passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

D. Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5:30 o'clock and 7 o'clock in the morning and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon over all of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through carriage provided for in paragraphs "A", "B", and "C" of this section.

E. It shall within six months take up and remove the turntable now at the intersection of its Jefferson and Woodward avenue lines and shall run the cars on the said Woodward avenue lines to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on said Woodward avenue.

Sec. 5. All rights conferred and obligations imposed under the terms of this ordinance shall continue during the period fixed by the ordinance, approved November 14, 1879, that is to say, until November 14, 1909.

Sec. 6. It is hereby reserved to the common council of the City of Detroit, the right to make such further rules, orders, or regulations as may from time to time be deemed by the common council necessary to protect the interests, safety, welfare, or accommodation of the city and public in relation to said railway.

Sec. 7. This ordinance shall take immediate effect when said Detroit City Railway shall have filed with the City Clerk a written acceptance of the same, and shall execute a bond to the City of Detroit, in the sum of $50,000, to be approved by the common council, conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bonds shall be filed within thirty days of the approval of this ordinance by the Mayor.

## EXHIBIT "A-7"

### GRAND RIVER STREET RAILWAY COMPANY

(Approved May 1, 1868. No. 13.)

*An Ordinance* to permit certain parties to establish, locate and operate street railways in and through certain streets of the City of Detroit.

It is hereby ordained by the Common Council of the City of Detroit:

Whereas, Nathanial Prouty, Moses F. Dickinson, William B. Wesson, Harvey King, and James P. Mansfield, their associates, successors, and assigns, propose to organize as a body politic and corporate, under a charter from the Legislature of Michigan or under the "Act to provide for the construction of Train Railways," approved February 13, 1855 (Laws of 1855, p. 338), for the purpose of constructing and operating in and through the streets of the City of Detroit, therefore,

Be it ordained by the Common Council of the City of Detroit:

Section 1. That consent, permission, and authority is hereby given, granted, and duly vested in the said Nathaniel Prouty, Moses F. Dickinson, William B. Wesson, Harvey King, James P. Mansfield, their associates, successors, and assigns, organized into a corporation under the laws of the State of Michigan as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, side-tracks, and switches in and along the course of the streets and bridges in the City of Detroit hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in the ordinance; *Provided,* That nothing therein contained shall be construed to interfere with the legal rights of any of the plank roads running into the City of Detroit.

Sec. 2. The said grantees are hereby, by the provisions of this ordinance, authorized to construct and operate railways, as herein provided, through Woodward avenue from Jefferson avenue, through said first named avenue to its intersection with Grand River avenue, and from thence on and through said Grand River avenue to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe and Toledo Railway tracks, and also on and through any other street or streets running between the western terminus above specified and Woodward avenue to the Detroit river, as the common council shall by resolution designate; *Provided,* That the track from Fort street to Jefferson avenue shall be laid under the direction of the Committee on Streets and the City Engineer. (As amended June 26, 1871. No. 14.)

Sec. 3. All railways built, constructed, or maintained under the provisions of this ordinance, shall be laid in the center of any and each street wherein the same are built, constructed, or maintained (save upon Woodward avenue), if on a single track; and if on a double track, the inside rail of each track shall be laid within two feet and four inches of the center of the street; the said rails shall be laid four feet and eight inches apart, so as to accommodate the most common width of carriage wheels; *Provided, Nevertheless,* That in all streets which are not paved, or when plank roads are laid, the tracks of said railway may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel

thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may at any time thereafter, within five years, build a second track, so that they do not interrupt the running of their cars on the first completed track; *Provided,* The consent of the common council is first obtained.

Sec. 4. The track of said railway shall be laid of such rails as shall least obstruct the free passage of vehicles and carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving, or otherwise, if it be necessary to relay said rails, with necessary ties and stringers, the same shall be done at the expense of the grantees; and in all streets and parts of streets, which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon and as shall be authorized and approved by the City Surveyor. The grantees, or their assigns, shall be required to keep the surface of the streets inside of the rails in good order and repair, and all snow, ice, dirt and filth cleared and removed from such portions of the streets at the expense of the grantees, and in such manner as not to obstruct travel to any part of the street.

Sec. 5. Consent, permission, and authority is hereby further given, granted and vested in the Grand River Street Railway Company to lay and construct an additional track along Woodward avenue from Grand River avenue to the north line of Fort street, so as to form and complete a double track between said points. Such additional track to be laid under the supervision and direction of the Board of Public Works, and subject to all the conditions and provisions of the ordinance governing and controlling said railway; *Provided, However,* That such authority and permission, and all rights therein, may be revoked and withdrawn by the common council of said city should any transfer, assignment, or consolidation of said railway company be made or effected with any other railway company or corporation. The cars to be used on said railway shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run at intervals not exceeding one regular car every five minutes during twelve hours each day, from Lincoln avenue to Jefferson avenue, and up to 11 o'clock at night. The cars and carriages used by said grantees shall be of the best style used on street railways in said city, and shall be used for no other purpose than to trans-

port passengers and their ordinary baggage; *Provided,* That other cars and carriages may be used for clearing said railway tracks from obstructions by snow and otherwise. (As amended March 3, 1883. No. 32.)

Sec. 6. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes; *Provided,* Cars so chartered shall not be considered regular cars within the meaning of the preceding section.

Sec. 7. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting two cars together.

Sec. 8. The said grantees shall complete their railway from Woodward avenue through Grand River street, in the easterly line of Woodbridge farm, contemporaneously with the paving of said street to said easterly line of the Woodbridge farm; said road thence from the easterly line of the Woodbridge farm to be completed to the western limits of the city as soon as the public necessity requires it, and the common council shall be the judge of such necessity; and shall also complete their road on any street designated by the common council, from Grand River street to the Detroit river, or to Jefferson avenue, within three months after such designation shall be made by said common council.

Sec. 9. No car shall be allowed to stop on a crosswalk or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

Sec. 10. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

Sec. 11. The grantees or their assigns, shall employ careful, sober, and prudent agents, conductors, and drivers to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors and drivers to keep vigilant watch for all trains, carriages, or persons on foot, and especially children, either upon the track, or moving towards it; at the first appearance of danger to such teams, carriages, footmen, or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

Sec. 12. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

Sec. 13. Conductors shall announce to the passengers the names of the principal squares and streets as the cars reach them.

Sec. 14. The cars shall at all times be entitled to the track, and any vehicles upon the track of said railway shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicles refusing to do so shall be liable to a fine not exceeding five dollars, on conviction before the Recorder's Court of said City of Detroit, and costs of prosecution shall not be at the expense of the city.

Sec. 15. The cars, after sunset, shall be provided with signal lights—blue in front and green in rear of the cars.

Sec. 16. Whenever gas or water pipes, and sewers are now laid in the streets herein specified, and through which railways are to pass, the said railway must be laid down and maintained subject to the rights now in the city, and the gas company, and Board of Public Works to take up or remove said pipes or sewers in such manner as not unnecessarily to damage or injure said railways, or their use, without claim against said city, gas company, or the Board of Public Works, and the common council expressly reserves to itself the right hereafter to lay down, or to permit to be laid down and repaired in said streets, gas or water pipes, and sewers, whenever the public or private convenience may require; the said gas or water companies, or private individuals, who shall take up pavement for the purpose aforesaid, being always required, as by the present city ordinance, to restore the pavement in the street to its former condition.

Sec. 17. If said grantees or their assigns shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, or by resolution of the common council, then the rights and privileges granted shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession hereof; *Provided,* The council does not extend the time; *Provided,* That if said grantees shall be delayed by the order or injunction of any court; *Provided,* Said injunction is not obtained by connivance of the said grantees; *And, provided further,* That if said grantees shall use due diligence to have said injunction removed, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

Sec. 18. It is hereby reserved to the common council of the City of Detroit the right to make such further rules, orders, or regulations as may from time to time be deemed

necessary to protect the interests, safety, welfare, or accommodation of the public in relation to said railways.

Sec. 19. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

Sec. 20. This ordinance shall be void and of no effect unless the grantees shall, within one month from the date of the passage thereof, notify the common council in writing of their acceptance of and agreement to the provisions of this ordinance, and shall within six months after said last date, commence the work of building and constructing said railway from Woodward avenue to the east line of the Woodbridge farm.

Sec. 21. It is distinctly provided, understood and agreed, that all the rights, franchises, or privileges, hereby conferred upon the grantees, are subject to the rights now vested in the Detroit City Railway Company.

Sec. 22. On and after the date upon which this ordinance shall take effect, whenever any of the streets or avenues through which the line of said railway is or may be laid shall be ordered to be paved, repaved, or repaired, said company shall furnish all material and bear the entire expense of excavating, grading, paving, repaving, and repairing that portion of the streets and avenues which lies between the other rails of their tracks, including the space between all double tracks and switches, and said company shall at all times keep the same clean and in good order and condition; but said company shall have the right for the purpose of paving, repaving, or repairing said spaces, to use either cedar blocks or cobblestone, or some similar durable and proper material, to be approved by the common council. (As amended June 12, 1882. No. 30.)

Sec. 23. The said grantees and their assigns shall pay to the Treasurer of the City of Detroit, annually, after five years from the passage of this ordinance, fifteen dollars on each and every passenger car, to be collected as a license for the use of the city, after the term of five years from and after this date.

Sec. 24. Whenever the said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said Act of the Legislature of the State of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted, and duly vested in said corporation without any further action, consent, permission, or authority of the common council whatever.

## EXHIBIT "A-8."

### MYRTLE STREET RAILWAY.

(Approved June 27, 1885. No. 37.)

*An Ordinance* to authorize the Grand River Street Railway Company to construct and operate a street railway on Myrtle street.

It is hereby ordained by the People of the City of Detroit:

Section 1. Subject to all and every of the provisions regulations and requirements of chapter fifty-two (52) of the Revised Ordinances of the City of Detroit for 1879 and of the amendments thereof, consent, permission and authority are hereby given to the Grand River Street Railway Company to lay, construct, use, and operate a single street railway track, with suitable switches, turnouts, and turntables, on and through Myrtle street, in the City of Detroit, and the same to keep and maintain and to operate thereon street railway cars, in the manner, and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance and the amendments thereto, to wit: Connecting with and joining the Grand River Street Railway track to the intersection of Myrtle street and Grand River avenue, and running thence westerly on and through Myrtle street to Mt. Hope avenue.

Sec. 2. The said company shall run through cars on the route described from the westerly terminus on Myrtle street to the intersection of Woodward and Jefferson avenues, and the rate of fare over such route shall be five cents.

Sec. 3. The said grantee shall complete said railway in and through said Myrtle street as aforesaid and have the same in complete operation in connection with the track of said Grand River Street Railway within one year from the approval of this ordinance, or within one year from the establishing the grade of said Myrtle street in accordance therewith.

Sec. 4. It is hereby reserved to the common council of the City of Detroit to make such further rules and regula-

tions as may from time to time be deemed by the said council necessary to protect the interest, safety, and accommodation of the public in relation to said route.

Sec. 5. This ordinance shall take immediate effect if the said Grand River Street Railway Company shall, within thirty days after the approval of this ordinance, file with the City Clerk its acceptance thereof, and a good and sufficient bond to the City of Detroit in the penal sum of five thousand dollars, to be approved by the common council, for the faithful performance of the terms of this ordinance by said company.

## EXHIBIT "A-9"

### EXTENSION OF CHARTER.

(Approved December 3, 1885. No. 40.)

*An Ordinance* extending the charter of the Grand River Street Railway Company, and providing for the payment of a tax by said company.

Be it ordained by the People of the City of Detroit:

Section 1. On the first day of January in each year from the first day of January, 1886, the Grand River Street Railway Company shall pay to the Treasurer of the City of Detroit a tax of one per cent during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railway within the city limits, and the treasurer of said company, on or before the beginning of each year, as above mentioned, shall make and deliver to said City Treasurer a sworn statement of said gross receipts; and said special tax shall be in lieu of license, and other taxes and charges, under existing ordinances: Provided, That this shall not in any manner affect the obligations of said company in the matter of paving or repairing pavements, as required by existing ordinances.

Sec. 2. The powers and privileges conferred and obligations imposed on the Grand River Street Railway Company by the ordinance passed May 1st, 1868, and the amendments thereto, are hereby extended and limited to thirty years from and after the first day of January, A. D. 1868. And it is further agreed and stipulated that the running of cars, on any street, or any portion thereof, will

be discontinued, temporarily, on such occasions as the Board of Aldermen may, by resolution, from time to time designate, to accommodate public processions or any other like public convenience.

Sec. 3. This ordinance shall take immediate effect when written acceptance of the terms thereof are filed in the office of the City Clerk of the City of Detroit by the said Grand River Street Railway Company, and from that date all ordinances, or parts of ordinances, in conflict with the provisions hereof, shall stand repealed and all ordinances, or parts of ordinances, not in conflict, are hereby affirmed and continued in force.

Sec. 4. The right to amend or repeal this ordiance, in case of its violation by said company, is expressly reserved.

## EXHIBIT "A-10"

### CRAWFORD STREET AND EAST CONGRESS STREET LINES—DOUBLE TRACK ON GRAND RIVER AVENUE.

(Approved January 3, 1889. No. 56.)

*An Ordinance* supplementary to Chapter 100 of the Revised Ordinances of 1884 of the City of Detroit, and all amendments and supplementary thereto.

It is hereby ordained by the Common Council of Detroit:

Section 1. Subject to all the provisions, regulations and requirements of Chapter 100 of the Revised Ordinances of 1884, consent, permission and authority is hereby given to the Grand River Street Railway Company to construct, operate, and maintain a double-track street railway in, along and through Grand River avenue, so-called, in the City of Detroit, from its junction with Woodward avenue to the city limits, together with all suitable and necessary turnouts, turntables, and crossovers; also to construct, operate, and maintain a single street railway track in, along and through Crawford street in the said City of Detroit, commencing at a point on the track of said Grand River Street Railway Company, and running thence northerly along the center of said Crawford street to the Detroit and Bay City Railroad crossing, together with all suitable and necessary turnouts, turntables, curves, and switches;

also, to construct, operate, and maintain a single-track street railway in, along and through Congress street east in said City of Detroit, commencing at a point on the track of the said Grand River Street Railway Company, and running thence easterly along said Congress street east to the easterly limits of the City of Detroit, or so far as said Congress street may be opened, and until said Congress street east shall be opened to the city limits, or one year thereafter as hereinafter provided, the said Grand River Street Railway Company—the permission of the Detroit City Railway having first been obtained for such action—shall connect its track at the corner of Mt. Elliott and Congress streets east with that of the Detroit City Railway and run its cars over said tracks of said Detroit City Railway along Mt. Elliott and Jefferson avenue east of Mt. Elliott to the Boulevard, thence to a point at a convenient distance from the Belle Isle Park bridge to be fixed by the Board of Pubic Works.

Sec. 2. Said double track on said Grand River avenue shall be laid so that the outer rails of said tracks shall be equidistant from a line drawn along the center of said street, and in addition to the paving, required to be done by said Grand River Street Railway Company, under its present ordinance, it shall lay and maintain the pavement between the double tracks hereby authorized.

Sec. 3. The lines hereby authorized to be constructed on Crawford street and Congress street east shall be operated in connection with the present Grand River Street Railway lines, and as a consideration of the permission hereby granted, the said company shall, when filing its acceptance of this ordinance as hereinafter required, file a stipulation or agreement in writing, by the terms of which it shall agree to carry passengers from the westerly termini of its lines on Myrtle street and Grand River avenue and the northerly terminus of its line on Crawford street, or any point on any of its said lines, to any point on its line on Congress street east or to the terminus thereof, for a single fare of five cents for one continuous trip, and from any point on its line on Congress street east in a westerly direction to any point on any one of its said lines on Grand River, Myrtle, or Crawford streets; also for a continuous trip from any point on the line of said railway to any other point of the lines of said railway, for a single fare of five cents for one continuous trip; and shall also within sixty days of the date of the acceptance of this ordinance issue and sell tickets at the rate of eight tickets for twenty-five cents. said tickets to be good for transportation over the entire route

of said company or any portion thereof traveled continuously either way when offered for fare by persons taking passage on the cars between the hours of 5:30 o'clock and 7:00 o'clock in the morning, and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon.

Sec. 4. The lines hereinbefore authorized shall be constructed and in operation within one year from the date of the passage of this ordinance: Provided, however, That the railway track along and upon Congress street east between Mount Elliott avenue and the city limits shall be laid, constructed and in use within one year after that portion of Congress street east shall be opened for public use: Provided, also, That the said Grand River Street Railway Company shall, within thirty days after the approval of this ordinance by the Mayor, file its acceptance thereof in writing, and shall give within the same period of time a bond in the penal sum of $20,000 for the faithful performance by it of the terms and conditions of this ordinance.

Sec. 5. The rights conferred and obligations imposed under the terms of this ordinance shall remain in force during the period fixed by the ordinance to which this is supplementary.

Sec. 6. That said company is hereby authorized to run its cars at a rate of speed not exceeding ten miles per hour, and is hereby required to run them at an average speed of not less than six miles per hour, and is also permitted to use, in operating its cars, electricity or any other proper or suitable motive power used by any other street railway company, now or hereafter organized and operated in the City of Detroit.

## EXHIBIT "A-11"

### THIRD STREET LINE.

(Approved April 23, 1889. No. 59.)

*An Ordinance* to authorize the Grand River Street Railway Company to construct, use, and operate a street railway line on and through Third street, in the City of Detroit, from its intersection with Grand River street to a point between Woodbridge street and the Detroit River on Third street.

*It is Hereby Ordained by the People of the City of Detroit:*

Section 1. Subject to the provisions of chapter 100 of the Revised Ordinances of 1884 and of all amendments and supplements thereto and subject to all the provisions of an ordinance entitled, "An ordinance supplementary to chapter 100 of the Revised Ordinances of 1884, of the City of Detroit and all amendments and supplements thereto," approved January 3, 1889, consent, permission and authority is hereby given to the Grand River Street Railway Company to lay a single track street railway with all necessary and convenient turnouts, sidetracks, and switches, in, along and through Third street, in the City of Detroit, from its intersection with the Grand River street southerly along said Third street in the center thereof to a point on said Third street south of Woodbridge street and between said Woodbridge street and the bank of the Detroit River, and the same to keep, maintain, and use, and to operate thereon street railway cars, subject and according to the provisions of the above mentioned ordinances.

Sec. 2. Said track shall join with the tracks of the Grand River Street Railway Company on Grand River street and shall be operated as a part of and in connection with the present street railway lines of said company. Said line shall be constructed and in operation within one year from the date of the approval of this ordinance.

## EXHIBIT "A-12"

### ADDITIONAL TRACKS ON GRISWOLD, WOODWARD AND ATWATER.

(Approved October 14, 1892. No. 70.)

*An Ordinance* authorizing the Detroit Citizens' Street Railway Company to construct, maintain and operate railway tracks on certain streets and to provide for the removal of a certain railway track on Woodward avenue.

Section 1. It is hereby ordained by the People of the City of Detroit: Consent, permission, and authority is hereby granted to the Detroit Citizens' Street Railway Company to construct, maintain and operate street railways with the necessary tracks, cross-over tracks, and turnouts, in and through the following streets and avenues in the City of Detroit:

First, to construct, maintain and operate a single track from the existing tracks operated by said company at the intersection of Griswold street and Grand River avenue, southerly along Griswold street and connecting with the existing track operated by said company on Griswold street, near the corner of State street.

Second. A single track from the existing track operated by said company at the intersection of Griswold street and Larned street west, thence southerly along Griswold street to Atwater street, and thence through Atwater street, connecting with the tracks on Woodward avenue.

Third. A single track from the north line of Jefferson avenue on Woodward avenue and thence through Woodward avenue to Atwater street.

Sec. 2. The said railways hereby authorized shall be operated as part of the system of railways authorized by the ordinance approved May 1, 1868, granting certain privileges to Nathaniel Prouty and others for a street railway along Grand River avenue, and the ordinance amendatory thereof and supplemental thereto, and shall be subject to the terms and conditions thereof. The same may be operated through Griswold street over the line of railway now existing thereon, subject to all the rights, whatever they may be, which were granted under an ordinance

granting authority to the Central Market, Cass Avenue and Third Street Railway Company and its assigns to construct and operate a street railway on Griswold street. But this ordinance shall not be held or treated as extending the time when the rights and privileges of maintaining and operating street railways under said ordinance approved May 1, 1868, or said supplemental ordinances expire; nor shall the same prejudice or waive any claim which the City of Detroit may have as to the legal enactment of any of said ordinances or as to any of the terms or conditions thereof. Nor shall the same prejudice or waive any claim of said city in the suit now pending between the said city and the Detroit Citizens' Street Railway Company and others. No additional fare shall be required for carriage over any tracks hereby authorized. Switches on the tracks hereby authorized shall not be permitted.

Sec. 3. It is further ordained that only two railroad tracks shall be maintained and operated by said Detroit Citizens' Street Railway Company on Woodward avenue between Grand River avenue and Michigan avenue, and the westerly track heretofore operated by the Detroit City Railway shall be removed, and upon the following terms, agreements and conditions:

First. The track heretofore operated by the Grand River Street Railway Company, the extension of which from its present terminus at Jefferson avenue to Atwater street is hereby permitted, shall be part of the system of railways authorized under the ordinance approved May 1, 1868, and may be connected with the other lines or tracks of the Detroit Citizens' Street Railway Company, at any points where said company may desire to make convenient connections with that track, so that cars from other lines may be operated thereon and cars on said track may be likewise operated on other lines or tracks.

Second. The right of maintaining and operating a street railway between Grand River avenue and Jefferson avenue by said Detroit Citizens' Street Railway Company shall be exclusive and the common council of the City of Detroit shall not give its consent to the construction or operation of any railroad track by any street railway company on Woodward avenue between Grand River and Jefferson avenue before the expiration of the time when the right to maintain a railway on Woodward avenue heretofore granted to the Detroit City Railway shall expire. And said Detroit Citizens' Railway Company may restore its track, for the removal of which this agreement is made, if said common council shall, within the time above limited,

grant consent to any other street railway company to construct a track on Woodward avenue, between Grand River avenue and Jefferson avenue.

Sec. 4. The Citizens' Street Railway Company shall, within thirty days from the date when this ordinance shall take effect, pay to the Treasurer of the City of Detroit any cost heretofore paid of repaving the space to be occupied by the tracks that are hereby authorized, on all streets or portions of streets upon which said tracks are laid.

Sec. 5. Any street railway to whom the privilege may be granted to construct a line of street railway through any of the streets mentioned in this ordinance, and in respect to which a privilege is hereby granted, may use for operating its road all of the additions to the line of said Citizens' Railway as are herein and hereby authorized, upon such terms as to compensation as shall be determined by arbitrators to be appointed by the Detroit Citizens' Street Railway Company, and one to be appointed by the Street Railway Company to whom such privilege may be granted, and if they are unable to agree upon the compensation to be paid to said Citizens' Street Railway Company for the use of such track, then a third arbitrator shall be appointed by the then presiding judge of the Circuit Court for this county, and any two or the persons so appointed may make such award.

Sec. 6. Said Citizens' Street Railway shall file its acceptance of the terms hereof with the City Clerk within thirty days from the date when this ordinance shall take effect, otherwise the same shall be void.

Sec. 7. An ordinance authorizing the Detroit Citizens' Street Railway Company to construct, maintain, and operate railway tracks on certain streets approved August 30, 1892, be and the same is hereby repealed.

Sec. 8. This ordinance shall take immediate effect.

## EXHIBIT "A-13"

### FORT WAYNE AND BELLE ISLE RAILWAY.

(The title "Fort Street and Elmwood Avenue Railway" was changed to "Fort Wayne and Elmwood Railway Company" by special act of the Legislature in 1871; and on July 1, 1892, the "Fort Wayne and Elmwood Railway Company" sold and transferred all its rights, franchises and property to the "Fort Wayne and Belle Isle Railway Company." On April 1, 1898, this company conveyed to the Detroit, Fort Wayne and Belle Isle Railway Company, and on December 31, 1900, the Detroit, Fort Wayne and Belle Isle Railway Company transferred all its property to the Detroit United Railway).

(Ordinance passed January 31, 1865. No. 9.)

*An Ordinance* to permit certain persons to establish, locate and operate a street railway in and through certain streets of the City of Detroit.

*Whereas,* Frederick Buhl, John P. Clark, Eber B. Ward, their associates, successors, and assigns, propose to organize as a body politic and corporate, under the "Act to provide for the construction of Tram Railways," approved February 13, 1855 (Laws of 1855, p. 388), and act or acts amendatory thereto, for the purpose of constructing and operating through the streets of the City of Detroit a city or street railway, to be known as the "Fort Street and Elmwood Avenue Railway;" therefore

It is hereby ordained by the Common Council of the City of Detroit:

Section 1. That consent, permission, and authority is hereby given, granted and duly vested in Frederick Buhl and his associates, who may be approved by the common council, their successors and assigns, organized into a corporation under the laws of the State of Michigan as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, sidetracks, and switches, in and along the course of the streets of, and bridges in, the City of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance.

Sec. 2. The said grantees are, by the provisions of this ordinance, authorized to construct and operate a street railway as herein provided, upon the following route: Commencing at the present westerly limits of the City of Detroit, where Fort street touches and intersects said westerly limits; thence easterly through Fort street to Woodward avenue; thence along Woodward avenue and along the southerly side of Michigan avenue to Randolph street; thence up Randolph street, and from said Randolph street to Elmwood avenue through Croghan street the whole distance to said Elmwood avenue; *Provided,* Said street can be opened without expense to the city; otherwise, through Croghan street to St. Aubin street; and thence through St. Aubin street to Clinton avenue; and thence through Clinton avenue to Elmwood avenue; and then through said Elmwood avenue to the gate of Elmwood Cemetery. If the City of Detroit pave Croghan street contemporaneously with the laying of the track on said street, said railway company shall pave their track on said street, and two feet four inches on either side thereof, at their own expense. (As amended March 3, 1865. No. 10.)

Sec. 3. The railway through said streets shall be laid in the centre thereof, if on a single track; and if on a double track, the inside rail of each track shall be laid a sufficient distance from the center of the street to enable two cars to pass on opposite tracks, and leave a space of at least eighteen inches; and the gauge of the track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels; *Provided, However,* That where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first; *And, Provided, Further,* That in all streets which are not paved, or where plank roads are laid, the track of said railway may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may, at any time thereafter, within five years, build a second track, so that they do not interrupt the running of their cars on the first completed track; *Provided,* The consent of the common council is first obtained.

Sec. 4. The track of said railway shall be laid of such rails as are now laid on Woodward avenue, and as shall least obstruct the free passage of vehicles or carriages

over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof as now established, or as they shall, from time to time, be established or altered; and in case of grading, paving, or otherwise if it is necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets, or parts of streets, which are not paved, the rails shall be laid in such a manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the City Surveyor. The grantees and their assigns shall be required to keep the surface of the streets inside the rails, and for two feet four inches outside thereof, in good order and repair, and all snow, ice, dirt and filth cleared and removed from the same, in such a manner as will not obstruct the passage of said streets at the expense of the grantees; *Provided, However,* That upon the paved portions of said streets, the materials for repaving shall be supplied at the expense of the city.

Sec. 5. The route of said railway shall commence at that point on Fort street where said street intersects the westerly limits of the City of Detroit; from thence running to Elmwood avenue, on the course set forth in section two of this ordinance; and in collecting fare, the whole of said distance shall be deemed but one route; and each passenger traveling the same continuously over the whole or any portion thereof shall pay only one fare, the amount of which fare shall be five cents.

Sec. 6. Said railway shall be completed from the western limits of the city to Woodward avenue, on or before the first day of August, A. D. 1865, and the remainder thereof, from Woodward avenue to Elmwood avenue, on or before the twentieth day of August, A. D. 1866. *Provided, However,* That the said railway shall be completed from Woodward avenue to St. Aubin avenue, upon the route designated in said ordinance, on or before the first day of July, A. D. 1866. (As amended June 16, 1866, and August 13, 1866. Nos. 11 and 12).

Sec. 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require and the common council shall prescribe; *Provided, Always,* That said council will not require them to run regular cars oftener than once in fifteen minutes, during the sixteen hours every day, from the fifteenth day of April to the fifteenth day of October, and

fourteen hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage; and the cars and carriages for that purpose shall be of the best style in use on said railways; *Provided,* That other cars and carriages may be used for constructing and repairing said railway tracks, and for clearing the same from obstructions by snow or otherwise.

Sec. 8. The rate of fare for any distance shall not exceed five cents in any one car, on said route, except when cars or carriages shall be chartered for specific purposes; *Provided,* Cars so chartered shall be so designated by placards, and shall not be considered regular cars within the meaning of the preceding section.

Sec. 9. Cars drawn in the same direction shall not approach within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting two cars together.

Sec. 10. No cars shall be allowed to stop on a crosswalk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

Sec. 11. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

Sec. 12. The grantees or their assigns shall employ careful, sober, and prudent agents, conductors, and drivers to take charge of their cars while on the road; and it shall be the duty of all such agents, conductors, and drivers to keep vigilant watch for all trains, carriages, or persons on foot, and especially children, either upon the tracks or moving toward it; at the first appearance of danger to such teams, carriages, footmen, or children, or other obstructions, the cars shall be stopped in the shortest time and space possible; and the drivers shall be provided with a whistle for the purpose of sounding the alarm in case of danger.

Sec. 13. Conductors shall not allow ladies or children to enter or leave the car while in motion.

Sec. 14. Conductors shall announce to the passengers the names of the principal squares and streets as the cars reach them.

Sec. 15. The cars shall at all times be entitled to the track, and any vehicle upon the track shall turn out when

any car comes up, so as to leave the track unobstructed; and the driver of any vehicle refusing to do so shall be liable to a fine not exceeding ten dollars, on conviction before the Recorder's Court of said City of Detroit; but costs and prosecution shall not be at the expense of the city; *Provided, However,* That the steam fire engines shall always have the right of the track on unpaved streets, when going to a fire.

Sec. 16. The cars after sunset shall be provided with colored signal lights—a red light in front and a green light in rear.

Sec. 17. Whenever gas or water pipes or sewers are now laid in the streets herein specified, and through which said railway is to pass, the said railway must be laid down and maintained, subject to the right now in the city and the gas company and the sewer and water commissioners to take up and remove said pipes or sewers in such a manner as not unnecessarily to damage or injure said railway or its use, without claim against said city, gas company, or water or sewer commissioners and the common council expressly reserves to itself the right hereinafter to lay down or permit to be laid down and repaired in said streets, gas or water pipes and sewers, and pave said streets, whenever the common council shall so direct by resolution; the said gas or water companies, or private individuals who shall take up pavement for the purpose aforesaid, being always required as by the present city ordinance, to restore the pavement in the streets to its former condition.

Sec. 18. If said grantees or their assigns shall fail to complete said railway, or any portion thereof, within the time prescribed by this ordinance, then the rights and privileges herein granted shall be forfeited as to the whole of said route herein established, and the city shall be entitled to take possession thereof, provided the council does not extend the time; Provided, that if said grantees shall be delayed by the order or injunction of any court, and said order or injunction shall not have been obtained at the instance or by the connivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

Sec. 19. It is hereby reserved to the common council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public, in relation to said railways.

Sec. 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

Sec. 21. Said grantees shall, on or before the first day of March, A. D. 1865, deposit with the Controller of said city the sum of five thousand dollars in money, or in United States stocks, or in treasury notes, bearing seven and three-tenths per cent interest, which deposit shall be security for the completion by said grantees of said line of railway, which they are required to construct and complete on or before the time herein mentioned for the completion of the same, and if the said railway shall not then be completed, the sum so deposited shall be forfeited to the city.

Sec. 22. The said grantees and their assigns shall pay to the treasurer of the City of Detroit, annually, twenty-five dollars on each and every passenger and other car, excepting only those cars used for constructing, repairing and cleaning the track on said road, to be collected as a license for the use of the city, after the term of five years from and after this date.

Sec. 23. Whenever said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said act of the Legislature of the State of Michigan, and the amendment or amendments thereto, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council whatever.

Sec. 24. No railway shall hereafter be built on and along the streets occupied by the railway herein provided for, for a greater distance than three blocks, at any one place, without the consent of the grantees and their successors.

Sec. 25. The rails of said street railway shall be laid on a foundation equal to that of Woodward avenue, or any other first-class railroad.

## EXHIBIT "A-14"

### SUPPLEMENTARY ORDINANCE.

(Approved June 30, 1880. No. 28.)

*An Ordinance* supplementary to an ordinance passed January 31, 1865, entitled "An ordinance to permit certain persons to establish and locate a street railway in and through certain streets of the City of Detroit," and the amendments thereto, and for other purposes.

It is hereby ordained by the Common Council of the City of Detroit:

Section 1. On the first day of July and January in each year from the first of July, 1880, the Fort Wayne & Elmwood Street Railway Company shall pay to the Treasurer of the City of Detroit a tax of one per cent, during the period of this ordinance, on the gross receipts collected for fares by the said company for riding on said railway within the city limits, and the treasurer of said company, on or before the beginning of each half year, as above mentioned, shall make and deliver to said City Treasurer a sworn statement of said gross receipts.

Sec. 2. On and after the date upon which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid, shall be hereafter ordered to be paved, repaved, or repaired, said company shall furnish all material and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which lies between the outer rails of their tracks, including the space between all double tracks and switches, and said company shall at all times keep the same clear and in good order and condition; but said company shall have the right for the purpose of paving, repaving, or repairing said space to use either cedar blocks or cobblestone, or some other similar, durable and proper material, such latter material to be subject to the approval of the common council, and all cobblestones or other material now constituting the roadway between the said tracks of the company shall belong to said company, while used for the purposes of paving, repaving and repairing in the place or places where such cobblestones or other material are now or hereafter may be for the first time laid or placed.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges under existing ordinances.

Sec. 3. The powers and privileges conferred and obligations imposed on the Fort Wayne and Elmwood Railway Company by the ordinance passed January 31, 1865, and the amendments thereto, are hereby extended and limited to thirty years from this date. And it is further agreed and stipulated that the running of cars on any street, or any portion thereof will be discontinued temporarily on such occasions as the common council may, by resolution, from time to time designate, to accommodate public processions or any other like public convenience.

Sec. 4. This ordinance shall take immediate effect, when written acceptance of the terms thereof are filed in the office of the City Clerk of the City of Detroit by the said Fort Wayne & Elmwood Railway Company, and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed, and all ordinances or parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

Sec. 5. The right to amend or repeal this ordinance in case of its violation by said company is expressly reserved.

## EXHIBIT "A-15"

### EXTENSIONS TO WESTERLY CITY LIMITS.

(Approved July 24, 1886. No. 43.)

*An Ordinance* to authorize the Fort Wayne & Elmwood Railway to construct, extend, maintain and operate its street railway and railway track on Fort street and Clark avenue to the westerly limits of the City of Detroit.

It is hereby ordained by the People of the City of Detroit:

Section 1. Subject to the existing provisions, regulations and requirements of Chapter Ninety-nine (99), of the Revised Ordinances of the City of Detroit, for the year 1884, and of the supplementary ordinance in said chapter contained, save and except as the same are by this ordinance changed or modified expressly or by implication, consent, permission and authority is hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, extend, use and operate a street railway track with all necessary and convenient switches, side-

tracks and turnouts in, on and along the center of Fort street, from the intersection of Fort street and Clark avenue, in the City of Detroit, to the intersection of Fort street and the westerly limits of the City of Detroit, and the same to keep and maintain and to operate thereon street railway cars for the term of twenty-four years from the date of the passage of this ordinance.

Sec. 2. The rate of fare for any distance on said Fort Wayne & Elmwood Railway, including the extension authorized by this ordinance, shall not exceed five cents in any one car except when cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall be so designated by placards, and shall not be considered regular cars within the meaning of Sec. 7 of Chapter 99 of the Revised Ordinances of 1884 of the City of Detroit.

Sec. 3. The said Fort Wayne & Elmwood Railway Company, its successors and assigns, shall run cars for the transportation of passengers and their ordinary baggage, between said Clark avenue and the said westerly limits of the City of Detroit every half hour for thirteen hours each day from the first day of May to the first day of November; and every hour for thirteen hours each day from the first day of November to the first day of May of each and every year: Provided, That said company may be required to run its cars over the extension hereby authorized as often as every fifteen minutes if required by public convenience and the ordinances of the common council.

Sec. 4. The said Fort Wayne & Elmwood Railway Company, its successors and assigns, shall build, construct and complete the street railway track, and the switches, sidetracks and turnouts hereby authorized, and shall have the same in readiness for operation ninety days after the acceptance of this ordinance by the Fort Wayne & Elmwood Railway Company has been filed in the office of the City Clerk of the City of Detroit: Provided, That such additional switches and sidetracks may be hereafter constructed along the extension of said railway hereby authorized as may be necessary or convenient.

Sec. 5. This ordinance shall take immediate effect when written acceptance of the terms hereof shall be filed in the office of the City Clerk of the City of Detroit by said Fort Wayne & Elmwood Railway Company, and from that date all ordinances and parts of ordinances in conflict with the provisions hereof shall stand repealed, and all ordinances or parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

## EXHIBIT "A-16"

### CHAMPLAIN STREET AND EAST FORT STREET LINES.

(Approved January 3, 1889. No. 55.)

*An Ordinance* to authorize the Fort Wayne & Elmwood Railway Company to extend and operate its railway upon and along certain streets, avenues and places of the City of Detroit.

It is hereby ordained by the People of the City of Detroit:

Section 1. Subject to the ordinances of Detroit, now in force, relative to the Fort Wayne & Elmwood Railway Company, except so far as they may be modified by this ordinance, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company, to lay, construct, maintain and use street railway tracks, and thereon to maintain and operate street railway cars, upon and along the following streets, avenues and places in the City of Detroit, namely:

Commencing at and connecting with the railway track of said company at the junction of Woodward avenue and Fort street, running thence along and on the Campus Martius to the north part of Cadillac Square; thence along and upon the north part of Cadillac Square, to Bates street, thence upon and along Bates street to the railway track of said company on Randolph street.

Also commencing at and connecting with the railway track of said company, at the junction of Randolph and Champlain streets, running thence upon and along Champlain street to the railway track of said company at the junction of Champlain street and Elmwood avenue.

Also, commencing at and connecting with the railway track of said company at the junction of Champlain street and Mt. Elliott avenue, running thence upon and along Mt. Elliott avenue to Fort street, thence along and upon Fort street to Baldwin avenue, thence upon and along Baldwin avenue to Champlain street, there connecting with the railway track of said company to be built on said street.

Also, commencing at and connecting with the railway track of said company at the junction of Champlain street

and Helen avenue, running thence upon and along Helen avenue to Jefferson avenue; thence, with the consent of the Detroit City Railway first obtained, upon the tracks of the Detroit City Railway upon and along Jefferson avenue to the junction of Jefferson and Frontenac avenues; thence to a point at a convenient distance from the Belle Isle Park bridge, to be fixed by the Board of Public Works.

Also, an additional track on Champlain street from Elmwood avenue to Mt. Elliott avenue.

Sec. 2. All the railway tracks hereby authorized to be laid and maintained shall be laid and maintained in the center of the street or avenue, except upon and along the Campus Martius and Champlain street, wherein the location of said tracks shall be established by the Board of Public Works, who are hereby authorized and required to determine and establish the line or location of such tracks upon and along the Campus Martius and Champlain street as shall in their judgment be deemed best for the public convenience, and at the same time secure to said company the full enjoyment of the rights and privileges hereby granted.

Sec. 3. The lines of street railway hereby authorized shall be single-track roads without turnouts, side-tracks or switches, except upon Champlain street, between Elmwood avenue and Mt. Elliott avenue, where an additional track is authorized (but without side tracks, turnouts or switches), and on Helen avenue and between Jefferson avenue and the Belle Isle Park bridge, where the railway shall be a single track road with suitable and convenient side tracks, turnouts and switches. All side tracks, turnouts and switches shall be removed from Croghan street, from Randolph street to McDougall avenue, those remaining to be used only for the private convenience of said company, and the street railway on Croghan street shall be made and continue a single track road, without side tracks, turnouts or switches, except as above provided.

Sec. 4. The said company shall complete the work of laying and constructing the railway tracks hereby authorized and shall have the same in operation within one year after the passage of this ordinance; *Provided, However*, That the railway track upon and along Fort street, between Mt. Elliott and Baldwin avenues shall be laid, constructed and in use within one year after that portion of Fort street shall be open for public use.

Sec. 5. The street railway tracks heretofore laid and constructed by said company under the provisions of the ordinance mentioned in Section one, and the street rail-

way tracks authorized to be laid and constructed by the ordinance, shall be deemed one railway, and the route of such railway shall commence at the western terminus thereof, at or within the city limits, from thence running along the lines of said railway, as heretofore and hereby established, to the eastern termini thereof, and in collecting fare the whole of said distance shall be deemed one route, and each passenger traveling the same continuously either way over the whole or any portion thereof shall pay one fare, the amount of which shall not exceed five cents; *Provided, However,* That said company shall issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for transportation over the entire route of said company or any portion thereof, traveled continuously either way, between the hours of 5:30 and 7 o'clock a. m. and 5:15 and 6:15 p. m., each ticket to be good for one fare, and this proviso to become operative within sixty days after the passage of this ordinance.

Sec. 6. The said company is hereby authorized to use in operating its street railway, electricity or any other suitable motive power used by any other street railway company now or hereafter organized and operating in the City of Detroit, subject, however, to the same conditions and limitations. The said company shall run its cars at the average rate of speed of not less than six miles per hour, nor more than ten miles an hour, unless otherwise required by common council.

Sec. 7. The said company shall have the right to run and operate its street railway cars across Belle Isle Park bridge whenever any other street railway company shall be granted the right to do so, with the same conditions and privileges as shall be accorded to such other company.

Sec. 8. This ordinance shall take effect when the said company shall have filed with the City Clerk its written acceptance of the same, and shall have executed and delivered to the City of Detroit a good and sufficient bond in the penal sum of twenty thousand dollars ($20,000), to be approved by the common council, and conditioned for the faithful performance of the terms and conditions of this ordinance.

## EXHIBIT "A-17"

(The following franchise, together with a franchise to the same individuals from the Township of Springwells, dated May 10, 1886, was transferred to the Detroit Electric Railway Company, and by that company, on Nov. 1, 1892, to the Detroit Suburban Railway Company; on Dec. 31, 1900, the Detroit Suburban Railway Company transferred all its property to the Detroit United Railway.)

### DIX AVENUE RAILWAY.

(Approved April 17, 1886. No. 41.)

*An Ordinance* to permit certain persons to establish and locate a street railway in and along the following streets: Commencing at the intersection of Baker and Twenty-fourth streets; thence along and through Twenty-fourth street to the Dix road, and along said Dix road to the city limits.

It is hereby ordained by the People of the City of Detroit:

Section 1. That consent, permission and authority is hereby given, granted and duly vested in George Dorr, Samuel A. Plumer, Calvin K. Brandon, Bethune Duffield, their associates, successors and assigns, organized into a corporation under the laws of the State of Michigan, to lay a single track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets in the City of Detroit hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the time hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance.

Sec. 2. The said grantees are by the provisions of this ordinance authorized to construct and operate a railway on and through the following streets, namely: Commencing at the intersection of Baker and Twenty-fourth streets, thence on and through Twenty-fourth street to the Dix road, and thence, with the exclusive right on and through the Dix road to the city limits.

Sec. 3. Said railway through the said streets shall be constructed under the supervision of the Board of Public Works, and the tracks shall be laid in the center of, and shall conform to the grade of said streets. The gauge of said track shall be four feet eight and one-half inches, and the rails shall be a flat rail, and shall be so laid as to least interfere with public travel (As amended June 25, 1889).

Sec. 4. The cars to be used on said railway shall be drawn by animals and shall run at a rate of speed not to exceed ten miles an hour, and shall run as often as public convenience shall require and the common council shall prescribe: Provided, that the said company shall run regular cars at least once in thirty minutes during the sixteen hours in every day; and the cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage; Provided, that other cars and carriages may be used for constructing and repairing said railway tracks and for clearing the same from snow or other obstructions (as amended June 25, 1889).

Sec. 6. The rate of fare for a single trip shall not exceed five cents for any distance within the city limits. The payment of such fare shall entitle the passenger to a continuous ride from any point upon said railway within the city limits, upon the cars of the Congress and Baker Street Railway, to any point upon the line of said last named railway; and payment of fare by a passenger riding west upon said Congress and Baker railway shall entitle such passenger to a continuous ride from any point upon that line upon the cars of the grantees' railway to any point upon its line within the city limits: Provided, in case the Congress and Baker Street Railway shall be extended easterly, the said fare above mentioned shall entitle the passengers traveling in either direction to ride over the line of such extension.

Sec. 7. No cars shall be allowed to stop upon a crosswalk or in front of any intersecting streets, except to avoid collision or prevent danger to persons or property in the street. When the conductor of any car is required to stop at the intersection of streets to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

Sec. 8. The grantees or their assigns shall employ careful, sober and prudent persons to operate said railway, and it shall be the duty of such employees to be vigilant and watchful to protect the public from danger.

Sec. 9. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

Sec. 10. Conductors shall announce to the passengers the names of the cross streets as the cars reach them.

Sec. 11. The cars shall at all times be entitled to the track, and any vehicles upon the track of said railway shall turn out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing to do so shall be liable to a fine not exceeding fifty dollars on conviction before the Recorder's Court of the City of Detroit.

Sec. 12. Said grantees shall provide and keep in repair such substantial and permanent approaches to its track at all points on the line of its road so that teams and vehicles and persons shall be enabled to cross the track conveniently at all times.

Sec. 13. The cars after sunset, shall be provided with proper signal lights.

Sec. 14. The said railway shall be laid down subject to the right of the city, or any municipal board, to lay down, take up, or change, or remove any work of any kind on or beneath the surface of the streets, without any claim for damages on the part of said railway.

Sec. 15. The powers and privileges conferred by the provisions of this ordinance shall be limited to twenty years from and after the date of its passage.

Sec. 16. Whenever the grantees, their successors and assigns, shall have organized themselves into a body politic and corporate under the said Act of the Legislature of the state of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted, and duly vested in said corporation without any further action, consent, permission or authority of the common council.

Sec. 17. Cars going in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting two cars together.

Sec. 18. On the first of July and January in each year, after the completion of said railway, said railway company shall pay to the Treasurer of the City of Detroit, a tax of one per cent during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railway within the city limits, and the treasurer of said company, on or before the beginning of each half year, as above mentioned, shall make and deliver to said City Treasurer a sworn statement of said gross receipts.

Sec. 19. On and after the date from which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid, shall be hereafter ordered to be paved, repaved, or repaired, said company shall furnish all the materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which lies between the outer rails of their tracks and said company shall at all times keep the same clear and in good order and condition; but said company shall have the right for the purpose of paving, repaving, or repairing said space, to use either cedar blocks or cobblestones or some other similar durable and proper material, such material to be subject to the approval of the Board of Public Works.

The foregoing special tax and undertaking as to paving shall be in lieu of license, but shall not alter the obligation of said company to pay general taxes on all its property.

Sec. 20. This ordinance shall be void and of no effect unless the grantees, their associates, successors and assigns, shall, within one month from the date of the approval thereof, notify the common council, in writing, of its acceptance and shall file a good and sufficient bond in the sum of five thousand dollars, to be approved by the City Controller, conditioned that the said railway shall be completed within the time specified herein, and for the faithful performance of the terms of this ordinance; and shall within one year from said date have said railway completed and in operation, running sufficient cars to accommodate the public.

Sec. 21. The right is hereby reserved to the common council of the City of Detroit to make such further rules, orders or regulations as from time to time may be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railway.

Sec. 22. Any wilful violation of or failure to comply with any of the provisions of this ordinance shall be punished by a fine not to exceed one hundred dollars and costs; and in the imposition of such fine and costs the court may make a further sentence, that the offender be imprisoned in the Detroit House of Correction or the County Jail until such fine and costs are paid: Provided, however, that the term of imprisonment shall not exceed the period of six months.

Sec. 23. The right to amend or repeal this ordinance in case of its violation by said company, is expressly reserved.

## EXHIBIT "A-18"

### DOUBLE TRACK ON DIX AND BAKER, ETC.

(Approved September 17, 1895. No. 97.)

*An Ordinance* granting the Detroit Citizens' Street Railway Company, a corporation organized and existing under the laws of the State of Michigan, its successors and assigns, the right to construct, maintain and operate double and single track street railways on the streets of the City of Detroit herein named.

It is hereby ordained by the People of the City of Detroit:

Section 1. Subject to all the provisions and requirements of Chapter 109, of the Revised Ordinances of the City of Detroit, for the year 1890, and of all amendments and supplements thereto, consent, permission and authority is hereby given to the Detroit Citizens' Street Railway Company to change the single track on Dix avenue to a double track from the westerly city limits along Dix avenue to Twenty-fourth street; and to construct a single track on Dix avenue from Twenty-fourth to Twenty-third street, and to construct a single track on Twenty-third street from Dix avenue to Baker street; and to change the single track to a double track on Baker street from Sixteenth street to Trumbull avenue.

Sec. 2. The Baker street line of the Detroit Citizens' Street Railway Company, after the Porter and Abbott street lines have been put in operation, shall run through Michigan avenue and Woodward avenue to Congress street, and east on Congress street over what is known as the loop line, to Mt. Elliott avenue.

That in consideration of crossing Baker street bridge over the M. C. R. R., the company shall shore the present structure in such shape as to make it safe for motor cars to cross, and be responsible and hold the city harmless from any damage from accident or otherwise in consequence of the use of said bridge for street railway purposes; and provided further, that when the city reconstructs said Baker street bridge, the said Detroit Citizens' Street Railway Company, grantee herein, shall pay to the city 25 per cent. of the cost of said construction at the time contract for such reconstruction is made, and fur-

ther, provided that where a street is widened the cost of widening and the additional pavement made necessary, the expense shall be borne by the said Citizens' Street Railway Company, provided that whenever the Detroit Railway shall relinquish its right to construct and operate a railway on Lafayette avenue, the Detroit Citizens' Street Railway Company will permit said Detroit Railway to have the joint use of their tracks on Michigan avenue from Porter and Abbott streets to the east line of Griswold street on the payment by said Detroit Railway to said Detroit Citizens' Street Railway Company the sum of ten thousand dollars if said relinquishment of Lafayette avenue, and the said payment by said Detroit Railway be made before any track is laid on Lafayette avenue by said Detroit Railway, its successors or assigns.

Sec. 3. This ordinance shall take effect, if accepted, in writing by said company, within ten (10) days after its final passage.

Approved Sept. 17, 1895.

H. S. PINGREE,
*Mayor.*

Attest:

CHARLES R. FORSTER,
*City Clerk.*

## EXHIBIT "A-19"

### TRUMBULL AVENUE LINE.

(Approved July 31, 1885. No. 38.)

*An Ordinance* supplementary to an ordinance entitled, "An Ordinance to permit certain persons to establish and locate street railways in the City of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, fixing and determining a new street railway route, and authorizing the Detroit City Railway to establish, construct and operate a street railway thereon.

*It is hereby ordained by the People of the City of Detroit:*

Section 1. Subject to all the provisions and requirements of Chapter 50 of the Revised Ordinances of 1878, and of the amendments thereof, and of an ordinance entitled, "An Ordinance supplementary to an ordinance entitled an ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 24, 1862, and the amendments thereto and for other purposes," approved November 14, 1879, the Detroit City Railway is hereby authorized and permitted to lay, construct, use, and operate a single street railway track, with suitable switches, turnouts, and turn-tables in and through the following streets and avenues of the City of Detroit, and the same to keep, maintain, and use, and to operate thereon railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance, viz: Commencing at a point on Trumbull avenue at the southerly line of Warren avenue, thence southerly along said Trumbull avenue to the center of Howard street; thence easterly along Howard street to Seventh street; thence along and over the track of the Congress and Baker street railway on Seventh street southerly to Congress street, easterly along Congress street to Randolph street, and southerly through Randolph street to the terminus of said road at Atwater street.

Sec. 2. The said Detroit City Railway shall complete that portion of said route from the intersection of Howard

and Seventh streets to Warren avenue and have the same in full operation within one year from the date of the passage of this ordinance.

Sec. 3. It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders, or regulations as may from time to time be deemed by the Common Council necessary to protect the interest, safety, welfare, or accommodation of the city and public in relation to said railway.

Sec. 4. This ordinance shall take immediate effect when said Detroit City Railway shall have filed with the City Clerk a written acceptance of the same and shall execute a good and sufficient bond to the City of Detroit in the sum of fifty thousand ($50,000) dollars, to be approved by the Common Council, and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the Mayor.

## EXHIBIT "A-20"

### EXTENSION OF TRUMBULL AVENUE LINE.

(Approved October 27, 1888. No. 54.)

*An Ordinance* supplementary to an ordinance entitled, "An Ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 24, 1862, and supplementary to amendments and supplements thereto, authorizing the extension of railway tracks in Trumbull avenue.

*It is hereby ordained by the People of the City of Detroit:*

Section 1. Subject to all the provisions and requirements of Chapter 98 of the Revised Ordinances of 1884, of the amendments thereof, and of an ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 24, 1862, and of supplements and amendments thereto," the Detroit City Railway is hereby authorized and permitted to extend, lay, construct, use, and operate a single street railway track in Trumbull avenue from the southerly line of Warren avenue, connecting with the present track of said railway, northerly through Trumbull

avenue to the southerly line of the Lake Shore & Michigan Southern Railway crossing, with suitable switches, turnouts and turn-tables.

Sec. 2. The said Detroit City Railway shall have said track completed and the same in full operation within sixty days from the date of the passage of this ordinance.

Sec. 3. It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders, or regulations as may from time to time be deemed by the Common Council necessary to protect the interest, safety, welfare, or accommodation of the city and public in relation to said railway.

Sec. 4. This ordinance shall take immediate effect when said Detroit City Railway shall have filed with the City Clerk a written acceptance of the same and shall execute and deliver a good and sufficient bond to the City of Detroit in the sum of ten thousand ($10,000) dollars, to be approved by the Common Council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the Mayor.

## EXHIBIT "A-21"

### DOUBLE TRACK ON TRUMBULL.

(Approved September 10, 1895. No. 96.)

*An Ordinance* granting to the Detroit Citizens' Street Railway Company, a corporation organized and existing under the laws of the State of Michigan, its successors and assigns, the right to construct, maintain and operate an additional street railway track on Trumbull avenue.

*It is hereby ordained by the People of the City of Detroit:*

Section 1. Subject to all the provisions and requirements of Chapter 109, of the Revised Ordinances of the City of Detroit, for the year 1890, and of all amendments and supplements thereto, consent, permission, and authority is hereby given to the Detroit Citizens' Street Railway Company to change its present single track on Trumbull avenue to a double track from Michigan avenue to the Lake Shore & Michigan Southern Railway crossing, and to maintain and operate the same as a double track line.

If the city should at any time authorize the widening of said street and paving, it shall be paid by the Citizens' Company, its successors and assigns, and not the abutting property holders.

Sec. 2. This ordinance shall take effect, if accepted in writing by said company within ten days after its first passage.

I hereby certify that this ordinance was passed on the 10th day of September, 1895, at a regular session of the Common Council, notwithstanding the veto of his honor the acting Mayor, by the following vote:

Yeas—Ald. Beamer, Beck, Bleil, Buhrer, Conus, Coots, DeGaw, Deimel, Herecke, Goldwater, Grunow, Hacker, Hanes, Harpfer, Licht, Marx, McGuire, Nagel, Patterson, Scovel, Stenius, Weidner, Weiler, Welsh, Wesch, Wuellner, and the President—27.

Nays—Ald. Batchelder and Groeschel.

Respectfully,

CHARLES R. FORSTER,
*City Clerk.*

## EXHIBIT No. "B-1"

(June 17, 1880.)
No. 188.

SPRINGWELLS TOWNSHIP
TO
FORT WAYNE & ELMWOOD RAILWAY COMPANY.

Assigned: Ft. Wayne & Elmwood Railway Company to Ft. Wayne & Belle Isle Railway Company.
Ft. Wayne & Belle Isle Railway Company to Detroit, Ft. Wayne & Belle Isle Railway Company.
Detroit, Ft. Wayne & Belle Isle Railway Company to Detroit United Railway.

### FORT STREET, CLARK AVENUE, RIVER ROAD.

It is hereby resolved and agreed by the Township Board of the Township of Springwells, Wayne County, Michigan, that the Fort Wayne & Elmwood Railway Company, its successors and assigns, may lay a single or double track for a street railway with all the necessary and convenient tracks for turnouts, side-tracks, and switches in and along the following streets and highways in said township, to wit, commencing at the present westerly terminus of the City of Detroit aforesaid; thence westerly through Fort street to the west line of Clark avenue, where it intersects Fort street; thence through Clark avenue to the River road; thence westerly through said River road to a point opposite Fort Wayne, with the privilege of extending said track along said River road to the River Rouge or to any point this side of it, if at any time within five years from the date hereof, in the judgment of the officers of the company, such extension shall seem advisable and necessary; and the same and the privileges herein granted to keep, maintain, and use, and to operate thereon railway cars and carriages for the term of thirty years from and after this date, said track or tracks to be laid in such portion of the street as to said company shall seem least likely to obstruct the passage and ordinary use of said streets and highways, and the said cars of the company to be at all times entitled to the track, and any vehicle upon the track to turn out when any car comes up so as to leave the track unobstructed.

*Provided, however,* and said privileges and rights are granted on the condition that said company sell trip tickets in packages of not less than ten tickets for fifty cents, but said tickets shall not be valid after the hour of 10 p. m., but between 10 p. m. and 6 a. m. double fare shall be charged as heretofore.

And this agreement shall take effect upon the acceptance by the said Fort Wayne and Elmwood Railway Company of the terms hereof, said acceptance to be endorsed hereon.

CONRAD CLIPPERT,
*Supervisor.*
JOHN STREATER,
*Justice of the Peace.*
WILLIAM FORD,
*Justice of the Peace.*
CHARLES J. RANSPACH,
*Town Clerk.*

## EXHIBIT "B-2"

(Dec. 14, 1891.)
No. 194.

**SPRINGWELLS TOWNSHIP**
**TO**
**FORT WAYNE AND ELMWOOD RAILWAY CO.**

Assigned: Ft. Wayne and Elmwood Railway Company to Ft. Wayne and Belle Isle Railway Company.
Ft. Wayne and Belle Isle Railway Company to Detroit, Ft. Wayne & Belle Isle Railway Co.
Detroit, Ft. Wayne & Belle Isle Railway Co. to Detroit United Railway.

### RIVER ROAD.

It is hereby resolved, agreed, and consented by the Township Board of the Township of Springwells, Wayne County, Michigan, that the Fort Wayne and Elmwood Railway Company, a corporaion organized and existing under the laws of the State of Michigan, for the construction and operation of Street Railway in the City of Detroit and said township, its successors and assigns, may, and it

is hereby authorized, licensed, and empowered to lay and maintain a track for a street railway, and thereon to operate and run street railway cars at any time during the term of this agreement, as follows: Connecting with the track of said Fort Wayne and Elmwood Railway Company at the intersection of the Dearborn Road and the River Road, in said township, and extending along said River Road, in the center thereof, to the River Rouge. The company shall lay a double track within five (5) years upon said road, tracks to be paved and the space between said tracks to be paved with cobble-stone in same manner as balance of track is now paved, the same kind of rails to be used as are allowed in the City of Detroit, "T" rails not to be used. The Company shall run its cars on said line at a speed not to exceed twenty (20) miles an hour, and may use horses, electricity, the Healy or other noiseless steam motive power, or any other suitable motive power, provided that in any case the motor shall be incased in an ordinary street-car body.

The terms of this agreement shall be for thirty (30) years from the date thereof, and the terms of all previous agreements between the Township Board of said township and said company shall be and hereby are extended to thirty (30) years from the date of this agreement. For the purpose of collecting fare, the above-described line of track shall be deemed a continuation of the track heretofore laid and now in operation in said township and the City of Detroit, and each passenger traveling over said entire route, continuously, either way, or any part thereof, shall pay one fare, the amount of which shall not exceed five (5) cents.

Provided that said track shall be completed and in operation by July 1st, 1892. Provided that said company shall give a bond in the sum of five thousand ($5,000) dollars, to be approved by the Township Board, to complete said track by the above date, and shall complete said double track within five (5) years. Provided also, that, after May 1st, 1892, upon the portion of Fort street between the western limits of the City of Detroit and the intersection of Fort street and the Dearborn Road, and after the completion of said extension July 1st, 1892, cars shall be operated daily in the same manner, at the same intervals as they are now run on the River Road between the western limits of the City of Detroit and the intersection of the Dearborn and River Roads, so-called—that is to say: One car leaving the Rouge River Bridge at six (6) o'clock in the morning; from seven (7) o'clock in the morning to

nine (9) o'clock in the evening, every eleven (11) minutes; from nine o'clock in the evening to twelve o'clock midnight, every fifteen (15) minutes, and after the annexation of the portion of said township within which said tracks lie to the City of Detroit, said company shall comply with the ordinance of the city relative to running cars.

In witness whereof, the parties hereto have subscribed to this agreement this fourteenth (14th) day of December, A. D. 1891.

WILLIAM MEYER,
*Supervisor.*
GEORGE O. FISCHER,
*Clerk.*
F. W. A. KURTH,
*Justice of the Peace.*
C. C. J. RANSPACH,
*Justice of the Peace.*
WILLIAM PETERSON,
*Highway Commissioner.*

Being the Township Board of the Township of Springwells, Wayne Co., Mich.

## EXHIBIT "X"

*An Ordinance* to fix and establish maximum rates of fares and charges which may be exacted and received by persons, corporations or partnerships operating street railways for the carriage of passengers within the City of Detroit, and to fix a penalty for the violation thereof.

*It is Hereby Ordained by the People of the City of Detroit:*

Section 1. No person, partnership or corporation operating a street railway on the streets of the City of Detroit, for the carriage of passengers for hire, shall charge more than five cents for a single ride, or six tickets for 25 cents, per person for one continuous trip within the city over any line which is now operated or shall hereafter be operated without a franchise fixing the rate of fare.

Section 2. No such person, partnership or corporation shall charge a higher rate of fare upon any line now or hereafter operated under a franchise contract than is fixed by such franchise.

Section 3. Between the hours of five and six-thirty a. m. and four forty-five and five forty-five p. m. tickets in

strips of eight for twenty-five cents shall be sold on all cars on all lines except where such sale would be contrary to the terms of a franchise contract, which tickets shall entitle the holder to the same rights between said hours as the payment of a five cent fare would.

Section 4. Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for 25 cents.

Section 5. A continuous trip means one journey from point to point within the city, whether the same is made upon one car or one line or by means of transferring from car to car or from line to line. Each such person, partnership or corporation, and the officers, agents, servants and employes thereof, shall, upon demand, furnish proper transfers to carry into effect the provisions of this section. The provisions of this Ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway pasenger traffic in the city, except where the same is governed by the provisions of such contract.

Section 6. Any such person, partnership or corporation which shall violate the provisions of this Ordinance, or shall attempt to do so, and any officer, agent, servant or employe who shall order or direct any such violation or attempted violation of the provisions of this Ordinance, shall be guilty of an offense, and upon conviction shall be fined not to exceed five hundred dollars, or imprisoned in the Detroit House of Correction for not to exceed ninety days, or shall be both fined and imprisoned in the discretion of the court, for each violation.

Section 7. This Ordinance is passed for the public welfare in the case of an emergency involving the peace, health and safety of the people of the city, and it is ordered to take immediate effect. It may be amended or repealed at any time by the Common Council of the City of Detroit. Unless so amended or repealed it shall remain in force for one year from August 9, 1918.

## EXHIBIT "D"

### 2. ORDINANCE OF VILLAGE OF FAIRVIEW TO DETROIT UNITED RAILWAY, MAY 16, 1905. No. 152.

*An Ordinance* granting consent, permission and authority to the Detroit United Railway to construct, build, maintain and operate a double track street railway on Jefferson Avenue; or the Lake Shore Road, so called, through the Village of Fairview from the Westerly limits to the Easterly limits thereof.

*Whereas,* On the ninth day of April, A. D. 1891, authority was granted by the Township Board of the Township of Grosse Pointe to certain persons, their associates and assigns, to construct and operate a line of railway on Jefferson avenue or the Lake Shore Road through said Township, which said line of railway has been constructed in accordance with the terms of said grant, partly on the said highway and partly on private rights of way owned or leased by said railway, and is now being maintained and operated by the Detroit United Railway as successor or assignee of said original grantees in said franchise of 1891; and

*Whereas,* Since the granting of said franchise the Village of Fairview has become incorporated and comprises a portion of the former Township of Grosse Pointe through which said grant or franchise extended, which said Village did on or about the sixth day of December, A. D. 1904, grant permission to said Detroit United Railway to construct, maintain and use tracks connecting its car barns in said Village with the main tracks on said avenue and to construct certain suitable "Y" tracks and loops; and

*Whereas,* The said Village has caused the said Jefferson avenue to be widened so as to embrace the private rights of way of the said Railway, and it is now proposed by said Village to pave said highway known as Jefferson avenue or Lake Shore Road, and it is desired by said Village that the tracks of said Railway maintained and used under said above mentioned grant or franchises be moved into the center of the highway, and the said Detroit United

Railway has agreed under certain conditions to move said tracks to the center of the highway at its own expense; therefore,

*The Village of Fairview Ordains:*

Section 1. That consent, permission and authority is hereby given, granted and duly vested in the Detroit United Railway, a corporation organized and existing under the laws of the State of Michigan, its successors and assigns, to construct, maintain and operate a double track for a street railway with all the necessary and convenient tracks for turnouts, side tracks and switches, and connections in, along and upon Jefferson avenue or the Lake Shore Road, so-called, through said Village from the Westerly limits thereof to the Easterly limits thereof together with the necessary poles and wires and all other appurtenances belonging or appertaining to a street railway operated by electricity by means of the over-head trolley system, and the same to keep, maintain and operate thereon a line of street railway for and during the term hereinafter specified and in the manner and upon the conditions hereinafter set forth.

Section 2. The said tracks shall at the expense of the said grantee be moved from their present location at the side of the highway to the center thereof where they shall be laid to conform to the standard gauge and with the same distance between the tracks as is now adopted in the City of Detroit, and shall be laid to such grade as may be established by the said Village and, as nearly as may be, flush with the surface of the pavement at the intersection of cross streets. A space of eighteen feet in width is reserved for said tracks between cross streets east of the St. Jean Road, which shall be marked off at the expense of the Village by stone copping or curb from the paved portion of the street, and the same to be maintained as a grass lawn or plat by said grantee and graded up flush with the top of the rails of its said tracks thereon. The said grantee shall pave the space between the outer rails of its tracks between the city limits and the easterly line of Hillger avenue and at intersecting streets east of Hillger avenue, with cedar block pavement on a stone foundation, and shall thereafter keep up and maintain the same. So much of the said tracks as are paved as above provided, shall be laid with deep seven inch "T" girder rails and the work of moving said tracks to the center of the highway and grading and paving as herein provided shall be done at the same time, as nearly as may be, that the said

village grades or paves the other portion of the said Jefferson avenue or Lake Shore Road.

Section. 3. The railway constructed, maintained and operated under this grant, and the above described grant of 1891, shall be operated by the overhead trolley wire system of electricity, or such other modern rapid power as said grantee may from time to time deem expedient, and the cars and other equipment shall be modern and made comfortable and sufficient for the accommodation of the public. The cars of said grantee shall at all times be entitled to the tracks and any vehicle upon the tracks of said railway shall turn out so as to leave said tracks unobstructed. Said grantee shall be entitled to haul trains for construction, freight, or other purposes for general traffic, provided the same shall not interfere with regular passenger traffic. The rate of fare for a single ride for a continuous trip for any distance in one direction on said Jefferson avenue within the Village of Fairview, shall be five (5) cents, provided that for extra or special cars or trains not on the time card, said grantee, its successors or assigns may charge special rates.

Section 4. Nothing in this grant or agreement shall be construed as altering, amending or repealing the grant or franchise of 1891 or the rights granted said Detroit United Railway by the resolution of December 6th, 1904, above described except as the same is necessarily altered by the requirements as to paving herein contained and by placing said tracks in the center of the highway, and said grants shall remain in full force and effect.

Section 5. The terms, conditions and agreements herein contained shall constitute a binding contract between said Village of Fairview and said corporation, its successors and assigns, for a period of thirty (30) years from the third day of May, 1905, and the same shall take effect upon its acceptance in writing by said corporation, if said acceptance is filed within thirty (30) days from the date of its passage with the Clerk of said Village, it being expressly agreed that the said Detroit United Railway by its acceptance of this grant relinquishes to said Village all of its perpetual rights and its rights to the private rights of way above referred to and which are now embraced within the limits of said avenue.

## EXHIBIT "D"

### 2. ORDINANCE OF VILLAGE OF FAIRVIEW TO DETROIT UNITED RAILWAY, MAY 16, 1905.

**No. 152.**

*An Ordinance* granting consent, permission and authority to the Detroit United Railway to construct, build, maintain and operate a double track street railway on Jefferson Avenue; or the Lake Shore Road, so called, through the Village of Fairview from the Westerly limits to the Easterly limits thereof.

*Whereas,* On the ninth day of April, A. D. 1891, authority was granted by the Township Board of the Township of Grosse Pointe to certain persons, their associates and assigns, to construct and operate a line of railway on Jefferson avenue or the Lake Shore Road through said Township, which said line of railway has been constructed in accordance with the terms of said grant, partly on the said highway and partly on private rights of way owned or leased by said railway, and is now being maintained and operated by the Detroit United Railway as successor or assignee of said original grantees in said franchise of 1891; and

*Whereas,* Since the granting of said franchise the Village of Fairview has become incorporated and comprises a portion of the former Township of Grosse Pointe through which said grant or franchise extended, which said Village did on or about the sixth day of December, A. D. 1904, grant permission to said Detroit United Railway to construct, maintain and use tracks connecting its car barns in said Village with the main tracks on said avenue and to construct certain suitable "Y" tracks and loops; and

*Whereas,* The said Village has caused the said Jefferson avenue to be widened so as to embrace the private rights of way of the said Railway, and it is now proposed by said Village to pave said highway known as Jefferson avenue or Lake Shore Road, and it is desired by said Village that the tracks of said Railway maintained and used under said above mentioned grant or franchises be moved into

the center of the highway, and the said Detroit United Railway has agreed under certain conditions to move said tracks to the center of the highway at its own expense; therefore,

*The Village of Fairview Ordains*:

Section 1. That consent, permission and authority is hereby given, granted and duly vested in the Detroit United Railway, a corporation organized and existing under the laws of the State of Michigan, its successors and assigns, to construct, maintain and operate a double track for a street railway with all the necessary and convenient tracks for turnouts, side tracks and switches, and connections in, along and upon Jefferson avenue or the Lake Shore Road, so-called, through said Village from the Westerly limits thereof to the Easterly limits thereof together with the necessary poles and wires and all other appurtenances belonging or appertaining to a street railway operated by electricity by means of the over-head trolley system, and the same to keep, maintain and operate thereon a line of street railway for and during the term hereinafter specified and in the manner and upon the conditions hereinafter set forth.

Section 2. The said tracks shall at the expense of the said grantee be moved from their present location at the side of the highway to the center thereof where they shall be laid to conform to the standard gauge and with the same distance between the tracks as is now adopted in the City of Detroit, and shall be laid to such grade as may be established by the said Village and, as nearly as may be, flush with the surface of the pavement at the intersection of cross streets. A space of eighteen feet in width is reserved for said tracks between cross streets east of the St. Jean Road, which shall be marked off at the expense of the Village by stone copping or curb from the paved portion of the street, and the same to be maintained as a grass lawn or plat by said grantee and graded up flush with the top of the rails of its said tracks thereon. The said grantee shall pave the space between the outer rails of its tracks between the city limits and the easterly line of Hillger avenue and at intersecting streets east of Hillger avenue, with cedar block pavement on a stone foundation, and shall thereafter keep up and maintain the same. So much of the said tracks as are paved as above provided, shall be laid with deep seven inch "T" girder rails and the work of moving said tracks to the center of the highway and grading and paving as herein provided shall be done at the same time, as nearly as may be, that the said

village grades or paves the other portion of the said Jefferson avenue or Lake Shore Road.

Section 3. The railway constructed, maintained and operated under this grant, and the above described grant of 1891, shall be operated by the overhead trolley wire system of electricity, or such other modern rapid power as said grantee may from time to time deem expedient, and the cars and other equipment shall be modern and made comfortable and sufficient for the accommodation of the public. The cars of said grantee shall at all times be entitled to the tracks and any vehicle upon the tracks of said railway shall turn out so as to leave said tracks unobstructed. Said grantee shall be entitled to haul trains for construction, freight, or other purposes for general traffic, provided the same shall not interfere with regular passenger traffic. The rate of fare for a single ride for a continuous trip for any distance in one direction on said Jefferson avenue within the Village of Fairview, shall be five (5) cents, provided that for extra or special cars or trains not on the time card, said grantee, its successors or assigns may charge special rates.

Section 4. Nothing in this grant or agreement shall be construed as altering, amending or repealing the grant or franchise of 1891 or the rights granted said Detroit United Railway by the resolution of December 6th, 1904, above described except as the same is necessarily altered by the requirements as to paving herein contained and by placing said tracks in the center of the highway, and said grants shall remain in full force and effect.

Section 5. The terms, conditions and agreements herein contained shall constitute a binding contract between said Village of Fairview and said corporation, its successors and assigns, for a period of thirty (30) years from the third day of May, 1905, and the same shall take effect upon its acceptance in writing by said corporation, if said acceptance is filed within thirty (30) days from the date of its passage with the Clerk of said Village, it being expressly agreed that the said Detroit United Railway by its acceptance of this grant relinquishes to said Village all of its perpetual rights and its rights to the private rights of way above referred to and which are now embraced within the limits of said avenue.

## EXHIBIT No. "F"

**HAMTRAMCK TOWNSHIP**
**TO**
**HIGHLAND PARK RAILWAY.**

**(April 17, 1891)**
**No. 160.**

**Assigned: Highland Park Railway to Detroit Suburban Railway.**
**Detroit Suburban Railway to Detroit United Railway.**

### WOODWARD AVENUE.

**To Whom It May Concern:**

**Be it known, that at a meeting of the Township Board of the Township of Hamtramck, in the County of Wayne, and State of Michigan, duly and lawfully convened and held this eighteenth day of April, A. D. 1891,—We, the undersigned, Township Board, by a resolution duly presented and adopted, the Highway Commissioner of said Township assenting to and ratifying the same; and,**

**In consideration of the sum of one dollar, to the said Board, in hand paid by the Highland Park Railway Company, a corporation organized and existing under the laws of the State of Michigan, do hereby grant and convey to and duly vest in the Highland Park Railway Company, its successors and assigns, the exclusive right, privilege, and authority to construct, maintain, and perpetually operate a single or double track street railway, with all the necessary and convenient tracks for turn-outs, side-tracks, and switches, poles and wires, and all other appurtenances thereto belonging, or appertaining, on and along Woodward Avenue, in said Township of Hamtramck, commencing at the northerly boundary line of the City of Detroit, in said county and state, running thence northerly along the line of said road to the northerly line of said township at its intersection with Woodward Avenue, the track of said railway shall be laid so as to obstruct as little as possible the free passage of vehicles; and the cars to be used thereon shall be operated by electric motor, cable or other power. The rate of fare for a single trip shall not exceed five cents.**

In Witness Whereof, The undersigned, said Township Board and Highway Commissioner of the Township of Hamtramck, in the County and State aforesaid, have hereunto set our hands this eighteenth day of April, A. D. 1891.

ROGER ECHLIN,
LAURANCE DALTON,
RICHARD GIFF, JR.,
COLUMBUS BURNETT,
WILLIAM BOEHMER,
*Highway Commissioner.*

## EXHIBIT "E"

### WOODWARD AVENUE.

To Whom It May Concern:

Be it known that we, the undersigned Township Board of the Township of Greenfield, in the County of Wayne and State of Michigan, at a meeting of said Board, duly and lawfully convened this seventeenth day of October, A. D. 1885, by a resolution duly presented and adopted,

And, in consideration of the sum of One Dollar to the said Board in hand paid, by Frank E. Snow and William A. Jackson, their successors or assigns, and hereby grant and convey to said Snow and Jackson, their successors or assigns, the exclusive right and privilege of constructing, maintaining, and perpetually operating a railway for the transportation of passengers along Woodward Avenue, in said Township of Greenfield, commencing at the railroad crossing of said avenue and running thence northerly along the line of said road, upon or adjacent to the Detroit and Birmingham Plank Road, to the six-mile stake on said road, with the right and privilege of maintaining and perpetually operating the same with all necessary and convenient turnouts, switches, double or single tracks and appurtenances thereto belonging.

Provided, That said railway shall be constructed at least ten feet east of the west line of said highway, and also shall at all times maintain an open ditch or suitable drainage along said road with all necessary slumways and other conveniences for the proper drainage of said road and the property abutting thereon:

And Provided, That the rate of fare on said railway shall not exceed five cents for each person per trip.

In Witness Whereof, The undersigned, said Township Board of the Township of Greenfield, in the County and State aforesaid, have hereunto set our hands this 17th day of October, A. D. 1885.

WALTER HENDERSON (Seal)
GEORGE T. FORD (Seal)
TIMOTHY KELLY (Seal)
*Township Board of Greenfield.*

## EXHIBIT "E"

## WOODWARD AVENUE.

To Whom It May Concern:

Be it known that we, the undersigned Township Board of the Township of Greenfield, in the County of Wayne and State of Michigan, at a meeting of said Board, duly and lawfully convened this seventeenth day of October, A. D. 1885, by a resolution duly presented and adopted,

And, in consideration of the sum of One Dollar to the said Board in hand paid, by Frank E. Snow and William A. Jackson, their successors or assigns, and hereby grant and convey to said Snow and Jackson, their successors or assigns, the exclusive right and privilege of constructing, maintaining and perpetually operating a railway for the transportattion of passengers along Woodward Avenue, in said Township of Greenfield, commencing at the railroad crossing of said avenue and running thence northerly along the line of said road, upon or adjacent to the Detroit and Birmingham Plank Road, to the six-mile stake on said road, with the right and privilege of maintaining and perpetually operating the same with all necessary and convenient turnouts, switches, double or single tracks and appurtenances thereto belonging.

Provided, That said railway shall be constructed at least ten feet east of the west line of said highway, and also shall at all times maintain an open ditch or suitable drainage along said road with all necessary slumways and other conveniences for the proper drainage of said road and the property abutting thereon:

And Provided, That the rate of fare on said railway shall not exceed five cents for each person per trip.

In Witness Whereof, The undersigned, said Township Board of the Township of Greenfield, in the County and State aforesaid, have hereunto set our hands this 17th day of October, A. D. 1885.

WALTER HENDERSON (Seal)
GEORGE T. FORD (Seal)
TIMOTHY KELLY (Seal)
*Township Board of Greenfield.*

## EXHIBIT No. "G"

HIGHLAND PARK VILLAGE
TO
HIGHLAND PARK RAILWAY.

(October 27, 1890)
No. 177

Assigned: Highland Park Railway to Detroit Suburban Railway.
Detroit Suburban Railway to Detroit United Railway.

### WOODWARD AVENUE.

THE VILLAGE OF HIGHLAND PARK ORDAINS:

Section 1. That consent, permission, and authority are hereby given, granted and duly vested in the Highland Park Railway Company, a corporation organized under the laws of the State of Michigan, its successors and assigns, to construct, maintain and operate a single or double track street railway, with all the necessary and convenient tracks for turnouts, side-tracks and switches, poles, wires and all other appurtenances thereunto belonging or appertaining, on and along Woodward avenue, in said village, commencing at the southerly boundary line of said village, and running thence northerly to the northerly boundary line of said village, in the township of Hamtramck and Greenfield, and to keep, maintain and operate thereon street railway cars and carriages, during all the time hereinafter specified and prescribed, and in the manner set forth in this ordinance.

Sec. 2. The railroad throughout said avenue shall be laid so that the center of the track shall be the center of the avenue, if on a single track, and if on a double track, the inside rail of each track shall be laid within two feet and four inches of the center of the avenue. Provided, That when said railway company shall place its tracks in the center of the avenue, said tracks shall be laid of such rails as shall least obstruct the free passage of vehicles over the same, and the upper surface of the rails shall be laid flush with the surface of the avenue, and shall conform to the grade thereof, as now established, or as it shall from time to time be re-established or altered, and if in case of grading, paving or otherwise, it be necessary to relay said rails, the said shall be done at the expense of the grantees; and on that portion of the avenue, which is not paved, the rails shall be laid in such a manner as shall least interfere with the public travel thereon, and as shall be authorized by the council. The grantees and their assigns shall be required to keep the surface of the street, inside the rails, and for two feet four inches outside thereof, in proper repair. And provided further that, until the said company exercise the right to lay their tracks through the center of such avenue, they are granted full power and permission to operate their cars, under the conditions of this ordinance, upon the tracks now laid along the west side of said Woodward Avenue, in said village of Highland Park.

Track and how laid

Repair Surface of Streets

Sec. 3. The cars to be used on said railway shall be operated by electric motor, cable, or other power, to be approved by the village council, and shall run as often as the public convenience may require. Provided, That said company shall run regular cars at least once in every forty minutes between the hours of 6 A. M. and 11:45 P. M., as often as once in every twenty minutes between the hours of 6 and 9 o'clock A. M., and between the hours of 5 and 8 o'clock P. M. The cars to be used upon said railway shall be run for the purpose of transporting passengers, and their ordinary baggage and packages.

Motive Power

Running Schedule

Sec. 4. The rate of fare for a single trip shall not exceed five cents for any distance within the corporate limits of the village; the payment of such fare shall entitle the passenger to a continuous ride from any point on said railway within the village limits.

Fare

Sec. 5. The grantees and their assigns shall employ careful and prudent persons only to operate said railway, and it shall be the duty of such employees to be vigilant and watchful to protect the public from danger.

Sec. 6. The cars, after sunset, shall be provided with proper headlights. Headlight

Sec. 7. The cars shall be entitled to the tracks, and all vehicles upon the tracks of said railway shall turn out when any cars approach, so as to leave the track unobstructed; and the driver of any vehicle refusing to do so, shall be liable to a fine not to exceed twenty-five dollars for each offence, upon trial and conviction before any court of competent jurisdiction.

Sec. 8. The powers and privileges conferred by the provisions of this ordinance, shall be limited to the term of thirty years from and after the date of its passage. 30-year Franchise

Sec. 9. The right is hereby reserved to the village council to make such further rules and regulations as may, from time to time, be necessary for the accommodation of the public, in relation to said railway. Rights of Village

Sec. 10. The right to amend or repeal this ordinance, in case of any violation by said railway company, is hereby expressly reserved. Amend or Repeal

Sec. 11. On the first day of January and July in each half year, commencing on the 1st of January, 1900, and continuing through the period of this ordinance, the Highland Park Street Railway Company shall pay to the Treasurer of the Village of Highland Park a tax of one per cent on the gross receipts of the line of street railway operated within the limits of said village; and the treasurer of said company shall, on or before the beginning of each half year, as above mentioned, make and deliver to said village treasurer a sworn statement of such gross receipts. Tax on Receipts

Sec. 12. This ordinance shall take effect within twenty days after acceptance of the terms thereof, by said Highland Park Street Railway Company, shall be filed by said company in the office of the clerk of the village of Highland Park.

## EXHIBIT "H"

**Franchise from Township of Greenfield to Brownell, et al.**

Know All Men By These Presents, That the undersigned, The Township Board of the Township of Greenfield, in the County of Wayne, and State of Michigan, for and in consideration of the sum of One Dollar, the receipt whereof is hereby acknowledged, and for other valuable considerations, have granted and conveyed, and by these presents do grant and convey to Seymour Brownell, James A. Randall and Hoyt Post, and to their successors and assigns, to be organized into a corporation under the laws of the State of Michigan, the exclusive right and privilege of constructing, maintaining and operating a street or tram railway with all necessary and convenient turn-outs, switches, single and double tracks and all necessary appurtenances thereunto belonging for the term of thirty (30) years from the date of the acceptance hereof, upon and along the Grand River Road, so called, from the west line of said Township of Greenfield to the present city limits of the City of Detroit; but subject, however, to the rights and franchises now vested by law in the Detroit and Howell Plank Road Company, on the following conditions, to-wit:

1. The street railway constructed, maintained and operated under this franchise or grant, shall be operated by the overhead trolley wire system of electricity, or some other better motive power, subject to the approval of the Township Board of the said Township, except that steam or animal power may be used in the construction of said railway, and until the said railway is completed to the Village of Farmington and the power house is in operation; provided the same shall be done within one year from the date of the acceptance of this franchise.

2. The tracks of said railway shall be laid so as to obstruct as little as practicable the free passage of vehicles and carriages along said highway, and so as best to accommodate public travel.

3. In the construction of said tracks the grade shall be made to conform as nearly as practicable with the grade of the highways which they may cross, and first class Bessemer steel rails, weighing not less than fifty-six (56) pounds, to the lineal yard, on ties placed not less than two

(2) feet apart, shall be used. The gauge of said road shall be four feet, eight and one-half inches (4 ft. 8½ in.).

4. The passenger cars to be used on said railway shall be of modern design, and supplied with suitable appliances and equipments for a suburban electric railway, and they shall be run over said railway as frequently as one every hour, each way, from six o'clock A. M. to nine o'clock P. M., and as much more frequently as the business shall, from time to time demand, and so as to insure the comfort, convenience and safety of its passengers.

5. Proper culverts and suitable safe crossings at all cross roads and streets, and at the main or principal entrance to all farms along the line of the said railway, shall be constructed and maintained by said railway Company.

6. The construction of said railway under this grant shall be commenced within three months from the date of the acceptance hereof, and in operation and running not less than fifteen (15) passenger cars each way daily, from the West line of said Township of Greenfield, to a connection with a street car line from the City of Detroit, within six months from the date of the acceptance hereof.

7. The rate of fare on the line of said railway shall be five cents (5c) for each passenger, for any distance in said township, and six (6) tickets shall be sold for twenty-five cents (25c) and each ticket shall entitle the holder to the same privileges as a cash fare, and shall be kept for sale on all passenger cars. There shall also be a special ticket good only for children going to or from school, that entitles the holder to ten (10) rides within said township of Greenfield. Such special tickets shall be kept for sale on all passenger cars for thirty cents (30c) each. Children under six years of age when accompained by their parents or guardians shall ride free.

8. The grantees herein named, or their successors or assigns, shall file a written acceptance of this franchise with the township Clerk of said township within sixty (60) days from the date hereof, and at the time of filing said acceptance they shall deposit a certificate of deposit or a certified check for One Thousand Dollars with the Township Treasurer of said Township; such check or certificate shall be safely kept by the said Treasurer until the time limit heretofore named shall have expired, when if the terms and conditions of this grant have not been complied with, said check or certificate shall become the property of said township, but if at any time prior to the expiration of the said time limit—to-wit: six months from the acceptance

hereof, the said grantees, their successors or assigns, shall construct and have in operation a railway from the west line of said township of Greenfield to a connection with a street car line from the City of Detroit, the Township Board will cause said Treasurer to return said check or certificate to said grantees, their successors and assigns.

9. The grantees under this franchise also agree to protect said township of Greenfield from all legal costs and expenses by reason of making this grant or franchise.

10. It is also expressly agreed and understood that said railway shall have the right to carry passengers, mails, express and all kinds of freight over its tracks in said township.

In Witness Whereof the Township Board of the Township of Greenfield, Wayne County, Michigan, have hereunto set their hands this first day of November, A. D. 1897.

PETER PROCHASKA,
*Supervisor.*
WILLIAM MONNIER,
*Justice of the Peace.*
J. LEWIS CHASE,
*Justice of the Peace.*
Township Board of the Township of Greenfield, Wayne County, Michigan.

## EXHIBIT "I"

(July 1, 1897.)
No. 196

**TOWNSHIP OF SPRINGWELLS**
**TO**
**DETROIT ELECTRIC RAILWAY.**

The township of Springwells, Wayne County, Michigan, ordains:

Section 1. That consent, permission, and authority are hereby given and granted to, and duly vested in the Detroit Electric Railway, a corporation organized and existing under the laws of the State of Michigan, its successors and assigns, to construct, maintain and operate for a period of thirty (30) years from the date of the acceptance of this ordinance, a single or double track street railway, with all necessary and convenient tracks, turn-outs, and side-tracks, poles, wires, and all other appurtenances thereunto belonging or appertaining, on and along Michi-

gan avenue in said Township, from the present westerly limits of the City of Detroit, at Livernois avenue, to a point westerly on said Michigan avenue, one hundred and fifty (150) feet west of the center line of Addison avenue, where said Addison avenue crosses said Michigan avenue; and to keep, maintain, and operate thereon, railway cars and carriages during the full time above specified and in the manner set forth in this ordinance.

Sec. 2. The said tracks shall be constructed of girder rails, and shall be laid as nearly as may be, flush with the surface of the road, and so as to obstruct as litttle as possible, the free passage of vehicles and carriages along said avenue. The track of said railway shall be of a gauge of four feet, eight and one-half (4 ft 8½ ins.) inches in width; and the space between the tracks shall be paved with crushed or cobblestone, brick, wooden blocks, or other suitable material, satisfactory to the Township Board and the Highway Commissioner of the Township of Springwells.

Sec. 3. The railway constructed, maintained and operated under this grant, shall be operated by the overhead trolley wire system of electricity or such other modern rapid power as said grantee may from time to time deem expedient, and the cars and other equipment shall be modern and made comfortable and sufficient for the accommodation of the public. The cars of said grantee shall at all times be entitled to the track, and any vehicle upon the track of said railway shall turn out so as to leave said track unobstructed. Said grantee shall be entitled to haul trains for construction, freight or other purposes for general traffic, provided the same shall not interfere with the regular passenger traffic. Said grantee shall operate its cars regularly, and so as to fully accommodate the traveling public; and between the hours of six o'clock a. m. and seven o'clock p. m. shall operate its cars not more than eighteen minutes apart, and at all other hours, not more than twenty-four minutes apart, except that it shall not be required to operate any cars between the hours of twelve o'clock midnight, and six o'clock a. m.; and said grantee shall begin operating its cars over said portion of Michigan avenue within twenty (20) days from the date of its acceptance of this ordinance and agreement. The rates of fare for a single ride for a continuous trip for any distance in one direction on said Michigan avenue within the Township of Springwells, shall be five (5) cents; and said grantee shall keep on sale at all times on its cars in service in said Township, tickets to be sold in strips of eight tickets for twenty-five cents; each of

which tickets or five cent fares, shall be accepted by said grantee for a single ride in one direction, from any point in said Township on said avenue, to any other point in said Township on said avenue, over the tracks herein authorized.

Sec. 4. The said grantee is hereby further authorized and empowered to extend said track or tracks hereinbefore authorized, to the Flint & Pere Marquette Railroad crossing on said Michigan avenue, provided it shall exercise the authority thus given it, and shall complete and operate one track to said railroad crossing within one year from the date of this ordinance.

Sec. 5. The terms, conditions and agreements contained in this ordinance, shall constitute a binding contract between said Township of Springwells and said corporation, and same shall take effect upon its acceptance in writing by said corporation, if said acceptance is filed within thirty (30) days from the date of its passage. Passed by the Township Board and accepted by the Highway Commissioner on condition that the said Railway Company accept the same at once.

In Witness Whereof, the Township Board of said Township, have hereunto subscribed their names, this first day of July, A. D. 1897.

CHRISTIAN D. ROESER,
*Supervisor.*
OTTO L. LENTERMOSER,
*Justice of the Peace.*
ROBERT G. MOODIE,
*Justice of the Peace.*
CHARLES WARNCKE,
*Township Clerk,*
*Highway Commissioner.*
CONRAD CLIPPERT,
*Second Commissioner.*

## EXHIBIT "J"

### FRANCHISE FROM THE TOWNSHIP OF SPRINGWELLS TO THE DETROIT, YPISLANTI & ANN ARBOR RAILWAY, NOVEMBER 9, 1897.

Whereas, the Detroit, Ypsilanti & Ann Arbor Railway is a corporation, duly organized under the laws of the State of Michigan, to-wit: Act No. 95 of the Session Laws of the State of Michigan, entitled, "An Act to provide for the formation of street railway companies," and has petitioned this body for a franchise and right to build, construct, maintain, use, and operate a street railway in and along and through certain streets or highways in the Township of Springwells;

*Therefore,* The Township Board of Springwells, the Commissioner of Highways of said Township concurring in and ratifying their action, in consideration of the sum of One Dollar, to said Township Board paid by the said corporation, the receipt whereof is hereby confessed and acknowledged, and also in consideration of the benefits and advantages accruing to the said Township and its inhabitants from the maintenance and operation of the said street railway by the said corporation, its successors and assigns, hereby resolves and agrees that consent, permission and authority be and they are hereby granted to the said corporation, its successors and assigns, to lay, construct, build, maintain and operate for the period of thirty years from and after the date hereof, a street railway, with the necessary turnouts, side-tracks, switches, cars and all appurtenances to said street railway belonging, upon the following terms and conditions:

1. The said street railway shall be constructed and operated in, along and through the street or highway known as Chicago road (or Michigan avenue) from the westerly limits of the Township of Springwells to the corner of said highway and Addison street, being at the end of the tracks now constructed and operated by the Detroit Electric Railway.

2. The track of said railway shall be laid to four feet eight and one-half inches (4 ft. 8½ ins.) gauge and so as to obstruct as little as possible the free passage of vehicles along the said highway. When the railway herein authorized to be constructed is built, that portion of

the roadway lying adjacent to the south rail of the said track shall be properly dressed to the track, so as to provide for the easy crossing of the same by vehicles. This portion of the work herein authorized to be performed shall be done to the satisfaction of the Highway Commissioner of Springwells Township and the Township Board of said Township.

3. So long as said highway shall remain unpaved, the track shall be laid on the north side of said highway. Proper and suitable crossings at all cross roads and streets and at the main or principal entrances to all farms, shall be built and maintained. The said corporation, its successors and assigns, may construct all necessary bridges and culverts along the line of said railway, subject to the sound approval of the Township Board, or may use where feasible the bridges and culverts now existing. All turn-outs shall be on north side of track.

4. If said highway shall be paved, then the track of said railway shall be removed to the center thereof contemporaneously with said paving. The track shall be laid to the grade and line established by the engineer in charge of the paving, and the grantee, its successors and assigns, shall have the right to take up such part of the pavement or highway as may be necessary to lay, repair or relay its track, but must replace the same in a proper and workmanlike manner.

5. The track of said grantee shall connect with the track or tracks of the Detroit Electric Railway now constructed on said highway between the limits of the City of Detroit and the said corner of Addison street.

6. The said Detroit, Ypsilanti & Ann Arbor Railway, grantee herein, its successors and assigns, shall be entitled to charge not more than five cents for the carriage of any single passenger for one continuous trip, over said railway on said Chicago road, within the limits of the Township of Springwells. Said grantee, its successors and assigns, shall carry passengers from the Flint & Pere Marquette Railroad crossing to any point on the line of the Michigan avenue street railway in the City of Detroit, west of Woodward avenue, for a single fare of five cents for a continuous trip. Said grantee, its successors and assigns, shall have the right to collect a fare of ten cents from any point in Springwells Township west of the Flint & Pere Marquette Railroad to any point on the line of the Michigan avenue railway in the City of Detroit. Said grantee, its successors and assigns, shall have the right to charge fares at the rate of one and one-half (1½) cents per mile between any point on its line in

Springwells Township and any other point on the line of its road, as the same may be extended as far west as the City of Ann Arbor; but no single fare under this provision shall be less than five cents. Nothing herein contained shall be construed to prevent the charging of a less rate of fare for the carriage of any passenger, at the option of the grantee corporation, its successors and assigns.

7. When the said railway on said Chicago road shall have been completed, cars shall be run thereon each way between the limits of said township, every half hour from 6:30 o'clock in the morning until 11:00 o'clock at night, and between the easterly limits of the Township and the Flint & Pere Marquette Railway crossing, every fifteen minutes between the hours aforesaid; but said grantee, its successors and assigns, shall have the privilege of running cars more frequently and during a greater number of hours. The 11:00 p. m. car shall start from Woodward at that hour.

8. The speed of the cars upon the said railway shall not be less than an average of eight miles an hour.

9. Any mechanical motive power except steam may be used in the running of the cars, and an overhead electric system is hereby expressly licensed and permittted to be adopted by said grantee, its successors and assigns; and nothing herein contained shall be construed as limiting said grantee, its successors and assigns, to the use of the motive power first chosen.

10. All agents and employes engaged in operating said railway shall be of good moral character, sober, careful and attentive to the wants of all patrons of said railway; and the conductors shall not permit disorderly persons to enter the car, or, having done so, shall have the right to eject such person, using therefor as little force as possible, and calling on local peace officers to render such aid as may be necessary, and it shall be the duty of such officers to render such aid.

11. All cars shall at all times be entitled to the track of said grantee, its successors and assigns. Work trains or construction trains may be run upon said railway before the opening of the line for traffic, and at such times thereafter as shall not interfere with the regular business of the line.

12. Said grantee, its successors and assigns, shall have the right to carry freight over its street railway system for hire.

13. The said railway, in and along the streets or highway called Chicago road, shall be completed on or before the 25th day of December, A. D. 1897.

14. The rights granted in this resolution are granted subject to any rights that may be held at present by the Detroit Electric Railway, on so much of the highway as lies between Addison street and the Flint & Pere Marquette Railroad crossing on Michigan avenue.

15. This agreement is to take effect when the written acceptance of the terms and conditions thereof shall be filed with the Township Clerk of the said Township of Springwells by the said Detroit, Ypsilanti & Ann Arbor Railway, provided that the said railway shall accept the same within five days from the date hereof.

16. Any and all material placed in said roadway for the purposes of the road herein authorized to be constructed, shall be forfeited to Springwells Township on failure to operate the same after May 15, 1898.

In Witness Whereof, the Township Board hereto subscribe their names this 9th day of November, A. D. 1897.

CHRISTIAN D. ROESER,
ROBERT G MOODIE,
FRED C. BEATCHER,
CHARLES WARNCKE,
*Township Board of Springwells.*

I concur in the foregoing action of the Township Board.

CONRAD CLIPPERT, 2d,
*Highway Commissioner.*

## EXHIBIT "K"

### NORTH DETROIT LINE.

**FRANCHISE FROM THE TOWNSHIP OF HAMTRAMCK TO SIMONS AND WINTER, JANUARY 23, 1899. No. 376.**

Assigned: Simons & Winter to North Detroit Electric Railway.
North Detroit Electric Railway to Detroit & Flint Railway.
Detroit & Flint Railway to Detroit United Railway.

At a meeting of the Township Board of Hamtramck Township, held at the office of the Township Board in said Township on the 23rd day of January, A. D. 1899.

Present—Wm. Blanck, Esq., Supervisor; Jacob Pipper, Esq., Clerk; John Reed, Esq., Justice of the Peace; R. S. Thomas, Esq., Justice of the Peace; Emil Kuhn, Esq., Highway Commissioner.

*Resolved,* That permission and authority be and the same is granted to David W Simons and John Winter and their associates, successors and assigns hereafter to be formed into a corporation under the laws of the State of Michigan, the sole right to locate, establish, extend, use, maintain, operate and own a single line street railway, for the period of thirty years, on the following highways in the Township of Hamtramck, Wayne County, Michigan, viz: Beginning at the city limits of Detroit on Campau avenue (formerly known as Chene street), thence northerly along said street to Carpenter road, thence easterly along said road to the Conant road, thence northerly along said road to the northerly line of said township. Beginning at the city limits of Detroit on Harper and St. Charles avennes westerly along St. Charles avenue to Strong avenue, northerly along Strong avenue to Center Line road. Beginning at the city limits of Detroit on Center Line road and Van Dyke avenue, north along said highways to the north line of the Township. Beginning at Railroad avenue and Center Line road, west on said highway through section 9 and thence south on said section line road to the Davidson road or boulevard, west on said highway to the Conant road in said Township; also on and along Holbrook and Caniff roads or avenues from the Conant road to the city limits of Detroit. The

grantees herein are authorized to use any or all the streets mentioned above as hereinafter provided with all the necessary and convenient poles, wires, tracks, turnouts, side-tracks, switches, bridges and culverts, and a double track from the city limits of Detroit on Campau avenue to the Grand Trunk Railroad. To run and maintain thereon cars for the carriage of passengers, packages, personal baggage, merchandise and produce, during its corporate life, upon the following terms and conditions:

First: The tracks of said railway shall be laid four feet eight and one-half inch gauge, and shall be laid so that the nearest rail shall be at least ten feet from the center of the highway, and shall be laid so as to least interfere with travel on the highway, and no turnouts or side-tracks shall be laid within ten feet aforesaid, and at no place shall said side-tracks or turn-outs be located so as to be on a public or private crossing. The ties shall be of iron, oak or cedar, eight feet long, laid on good, sound gravel foundation, two or three feet from center to center. The rails shall be of modern type steel "T" rail not less than seventy pounds to the yard. Provided, that in case said highway, or any part thereof, shall hereafter be paved, then the track of said railway shall be removed to the center of said street and to be made to conform to the grade line established by said Township Board or other authorities.

Said track shall be laid on concrete foundation similar to the specifications provided by the City of Detroit, the rails to be grooved rails of similar size and weight as those required by the ordinances and specifications of the City of Detroit; all the expense of removing and constructing said track is to be borne by the railway company.

Second: That the grantee, its successors and assigns, shall build, construct and maintain culverts and bridges along the line of said highway, wherever the same are now or may hereafter be necessary or convenient, and shall build and maintain plank crossings at all intersecting roads or highways or private crossings at all points where such highways or private crossings now exist or may in the future be reasonable or necessary.

Third: The cars and equipments on said railway must be modern and comfortable, and must make trips at least once each hour each way between the hours of 6 p. m. and 11 p. m. each day, and shall be operated by what is known as the overhead trolley system of electricity; *Provided, however,* that permission may hereafter be granted to use a better system should the same be developed. The cars shall at all time be entitled to the track, and any vehicle on said track shall turn out so as to leave said track unobstructed.

Fourth: The rates of fare for any distance within said Township shall not exceed five cents for the carriage of any single passenger and ordinary hand baggage, for one continuous trip over said railway within said Township; *Provided,* that the grantees herein may charge one and one-half cents per mile to passengers on cars which may hereafter run through said Township from outside villages or towns; *Provided, further,* that one child under seven years of age accompanied by parent or guardian shall ride free, and two children under seven years of age shall pay one fare; *Provided, further,* that workingmen's tickets shall be kept for sale on the cars of said railway at 8 for 25 cents, good for one hour morning and evening at such time as may hereafter be designated by ordinance of the Township Board.

Fifth: Snow when removed from the track must be so removed as not to obstruct travel on the highway.

Sixth: This franchise is granted upon the express condition that any street railway company, or companies, shall have the right to use the tracks of the said grantees, its successors and assigns, within the Township of Hamtramck, upon the payment by them of a reasonable compensation therefor, to be fixed by arbitration, each company to choose an arbitrator, the third to be chosen by the two or appointed by the Circuit Judge of Wayne County, unless such street railway companies can agree between themselves as to such compensation; *Provided, however,* such use will not interfere with the business of the said grantees.

Seventh: Cars shall stop for passengers either to get on or off at highway crossings, and at such other reasonable places as shall be designated by the Township Board.

Eighth: Said grantee, its successors and assigns shall fully indemnify and save harmless the Township of Hamtramck, for any and all claims for damages which said Township might be made or become liable to pay by reason of the construction, or operating of said street railway.

Ninth: The said grantees shall build and complete a a line of street railway over the route in this grant over what is known as the loop on the following streets: St. Charles, Strong, Center line or Van Dyke avenue, Railroad avenue, Prairie Mound, Davidson road or boulevard, Conant avenue, Carpenter avenue, Joseph Campau avenue, to and connecting with the tracks of the Detroit Electric Railway Company, or Detroit Citizens' Street Railway Company, or both, and shall have cars in operation thereon running continuously over said line and to the City Hall in the City of Detroit, without change of cars if pos-

sible; such construction of said street railway line and operation of cars thereon to be according to the terms of this grant, and the construction of said street railway line and the operation of cars thereon, is all to be done and fully completed by the first day of December, 1900. The grantees herein shall build and complete a line of street railway and operate cars thereon over all or any of the streets, avenues or highways, not provided in the above referred to loop, on or before three years from the time of this grant.

Tenth: This franchise and the permission hereby granted shall cease and be utterly void unless said grantees shall within sixty days from the date hereof accept the same in writing, and unless the said grantees, its successors and assigns, shall on or before the first day of December, 1900, fully complete and equip said loop according to the provisions hereof; and unless the said grantees, their successors and assigns, shall during the entire term for which this franchise is granted, continue to operate said railway and comply with all the provisions herein.

WILLIAM BLANCK,
*Supervisor.*
JOHN REED,
*Justice.*
ROBERT S. THOMAS,
*Justice.*
*Clerk.*

## EXHIBIT "L"

### HARPER AVENUE LINE TO CENTER LINE.

### AGREEMENT BETWEEN HIGHWAY COMMISSIONER OF HAMTRAMCK TOWNSHIP AND DETROIT, UTICA AND ROMEO RAILWAY, OCTOBER 7TH, 1898, No. 379.

Assigned: Detroit, Utica & Romeo Ry. to Detroit & Flint Railway.
Detroit & Flint Railway to Detroit United Ry.

It is hereby agreed between Emil Kuhn, Commissioner of Highways of the Township of Hamtramck, Wayne County, Michigan, and the Detroit, Utica & Romeo Railway, a corporation duly organized and existing under the laws of the State of Michigan, as follows:

The said Commissioner has granted and does hereby grant consent and permission to said railway to locate,

establish, construct, maintain and operate a street railway along and through the following streets in said Township of Hamtramck, to-wit: Beginning at the terminus of the Detroit Electric Railway line on Harper Avenue, running thence in a northeasterly direction along Harper Avenue to Van Dyke Avenue, thence northerly on Van Dyke Avenue and Center Line Road to the boundary line between Wayne and Macomb Counties, on the following express terms and conditions, which said Railway hereby accepts, to-wit:

1. That said Railway, its successors and assigns, shall construct said road and the necessary connections in order to have cars running from the north line of said Township of Hamtramck to the City of Detroit on or before the 1st day of July, 1900, and the failure to do so shall be and constitute cause for the forfeiture of all rights and privileges granted.

2. That the motive power to be used on said Railway shall be the trolley electric system. The placing of poles and wires necessary to be erected in said Township used in connection with said road to be under the control and subject to the approval of the Highway Commissioner of said Township; that said road shall be equipped with as comfortable cars and as good equipment otherwise as the so-called Detroit & Pontiac Electric Road, and the service thereon shall not be less than hourly between the hours of 6 A. M. and 11:30 P. M. between the northerly line of said Township and the City of Detroit, on each and every day.

3. That the authority granted shall be construed to be authority only to lay a single track on said highways, together with such turnouts, sidetracks and switches as shall be necessary for the successful operation of said road. Said tracks shall be laid of T rails of not less than seventy pounds to the running yard, of the standard gauge, and upon the easterly side of said highways, with the westerly rail ten feet from the center of the highway, except where otherwise directed by said Commissioner; the location of tracks and switches to be approved by him.

4. The said Railway, its successors and assigns, shall at all street crossings and in front of all residences and building fronting upon said highways where said Railway shall pass, and at all farm crossings, keep the space between the rails of said track so filled in with planks as to allow carriages, wagons and other vehicles to pass over said track easily and without obstruction, and shall also

keep and maintain sufficient plank on the outside of said rails to enable carriages and other vehicles to pass over the same easily.

5. All cars shall have signal lights after dark, one at each end, a red light in front and a green light in the rear. The fare for each person over such portion of the line as lies within the limits of said Township, or any part thereof, shall not exceed five cents, provided that said Railway, its successors and assigns, shall keep on sale on all its cars, tickets which shall be sold at the rate of eight for twenty-five cents, which shall be accepted as fare from any point in said Township to any other point therein, between the hours of 5:30 P. M. and 6:30 P. M. and between the hours of 6 and 7 A. M. One child under six years of age, when accompanied by an adult, shall be carried free, and one fare shall be charged for two of such children; provided, however, that when cars are hired for special specific purposes or time the rate herein fixed shall not apply. The failure on the part of said Railway, its successors and assigns, to make the required number of trips, as above provided for, for a continuous period of one week, shall constitute and be a cause for the forfeiture of the rights and privileges granted.

6. It shall be the duty of said Railway, its successors and assigns, to put in and maintain at all places where its tracks or roadbed shall interfere in any way with the drainage, present or future, sewer crocks of sufficient size to carry off the water, and to repair any and all damage done to the highways, ditches or other improvements within the highway, by the construction and repairing of the tracks of said road along said highway, and further, to protect the Township of Hamtramck, or any property owner therein, against all lawful claims or damages arising from the construction of the tracks herein provided for. No change shall be made to the ditches as constructed, unless with the consent of the owners of the property adjacent thereto.

7. The right granted to said Railway to carry freight over said line is limited to the carriage of freight (other than express, packages, etc.) between the hours of ten P. M. and six A. M.

8. The cars to be operated on said Railway shall stop at all crossings and at other convenient places within said township for the reception and delivery of passengers, the right to fix such places being reserved to said Commissioner acting with the property owners along the line, provided the number of stopping places within said Township shall not be made to exceed ten.

9. Said Railway, its successors and assigns, shall employ careful, sober and prudent agents, conductors and motormen to take charge of the cars while on the road, and it shall be the duty of such agents to keep vigilant watch for all carriages or persons on foot, especially children, either on said tracks or moving towards them and at the first appearance of danger, to stop such cars.

10. All rights granted may be repealed if the Detroit, Utica & Romeo Railway shall fail to commence the construction of its railway within thirty days after it has secured all the necessary franchises and grants of rights-of-way between the termini of said railway, to-wit: The northerly limits of the City of Detroit and the Village of Romeo, and prosecute the work of construction and equipment to completion with reasonable diligence.

*In Witness Whereof,* The said Emil Kuhn, Commissioner of Highways of the Township of Hamtramck, in the County of Wayne and State of Michigan, has signed his name hereto, and the said the Detroit, Utica & Romeo Railway has caused these articles to be executed by its President and Secretary, this 7th day of October, A. D. 1898.

EMIL KUHN,
*Commissioner of Highways of Township of Hamtramck.*

(Seal)

The Detroit, Utica & Romeo Railway,

By A. MCVITTIE,
*President.*

FRANK D. ANDRUS,
*Secretary.*

## EXHIBIT "M-1"

**TOWNSHIP OF SPRINGWELLS**

**TO** **May 14, 1898.**

**DETROIT ELECTRIC RAILWAY** **No. 197**

**The Township of Springwells, Wayne County, Michigan, ordains:**

**Section 1. That consent, permission and authority are hereby given and granted to and duly vested in The Detroit Electric Railway, a corporation duly organized and existing under the laws of the State of Michigan, its successors and assigns, to construct, maintain, use and operate for a period of thirty years from the date of the acceptance of these articles, a single or double track street railway with all necessary and convenient tracks, turnouts, and side-tracks, poles, wires and all other appurtenances thereunto appertaining or belonging, on or along Dix avenue from the easterly limits of the Township of Springwells, westerly on said Dix avenue to Toledo avenue, thence westerly on Toledo avenue to Springwells avenue, thence southerly on Springwells avenue to Chamberlain avenue, thence westerly along said Chamberlain avenue to Woodmere avenue, thence southerly along Woodmere avenue to Fort street; and to keep, maintain and operate thereon railway cars or carriages during the full time specified and in the manner stated therefor, in these articles.**

**Section 2. That said railway tracks shall be constructed of girder rails and shall be laid as close as may be flush with the surface of the road, so as to obstruct as little as possible the free passage of vehicles and carriages along said route; the track of said railway shall be of a gauge of four feet, eight and one-half (4 feet, 8½) inches in width and the space between the tracks shall be paved with crushed or cobblestone, brick, wooden blocks or other suitable material satisfactory to the Township Board and the Highway Commissioner of the Township of Springwells.**

**Section 3. The railway constructed, maintained and operated under this grant shall be operated by the overhead trolley system of electricity or such other rapid power, except by steam, as said grantee may from time to time**

deem expedient, and the cars and other equipment shall be modern and made comfortable. The cars of said grantee shall at all times be entitled to the track and any vehicles upon the track of said railway shall turn out so as to leave said track unobstructed. Said grantee shall be entitled to haul trains for construction, freight, or other purposes, for general traffic, provided the same shall not interfere with regular pasesnger traffic. Said grantee shall operate its cars for the reasonable accommodation of the traveling public, and between the hours of 5:45 o'clock A. M. and 8 o'clock P. M. shall operate its cars in both directions not more than twenty-four minutes apart, and between the hours of 8:00 o'clock P. M. and 11:30 o'clock P. M. shall operate its cars in both directions not more than one hour apart. And said grantee shall begin operating its cars over said route within twenty days after the acceptance of these articles of agreement. The rate of fare for a single ride, for a continuous trip for any distance in one direction on said route within the Township of Springwells shall not exceed five cents; provided that said rate of five (5) cents shall entitle the passenger to ride over the route herein granted from the junction of Fort street and Woodmere avenue in said Township of Springwels, either direct or by transfer, to the City Hall in the City of Detroit; and said rate of five (5) cents shall entitle the passenger to ride from the City Hall in the City of Detroit over the route herein granted in the Township of Springwells direct or by transfer to the junction of Fort street and Woodmere avenue in said Township of Springwells; said passengers either coming from or going to said City Hall to be routed over such route within the present city limits of the City of Detroit, as may be most convenient to said Company.

Section 4. The terms, conditions and agreements contained in these articles shall constitute a binding contract between said Township of Springwells and said Railway company, and same shall take effect upon its acceptance in writing by said railway company, provided said acceptance is filed within thirty days from the date of the passage thereof.

*In Witness Whereof,* The undersigned, said Township Board of the Township of Springwells, have hereunto subscribed their names this 14th day of May, 1898.

FREDERICK W. HIGGINS,
*Supervisor.*

HENRY WALTERS,
*Justice of the Peace.*

FRED C. BEATCHER,
*Justice of the Peace.*

JOHN WARNCKE,
*Clerk.*

I concur in the foregoing action of the Township Board.

WILLIAM WORMSDENT,
*Highway Commissioner.*

## EXHIBIT "M-2"

**TOWNSHIP OF SPRINGWELLS**
**TO** **(March 6, 1901)**
**DETROIT UNITED RAILWAY.** **No. 198.**

***The Township of Springwells, Wayne County, Michigan, Ordains and Agrees as Follows:***

**Section 1. That subject to an ordinance and agreement made by the said Township of Springwells on the 14th day of May, 1898, and accepted and agreed to by the Detroit Electric Railway on the 16th day of May, 1898, authorizing the said Detroit Electric Railway, its successors and assigns to construct, maintain, use and operate a single or double track electric street railway on Dix Avenue, Toledo, Springwells, Chamberlain and Woodmere Avenues, in said Township, consent, permission and authority are hereby given, granted and duly vested in the Detroit United Railway, a corporation, its successors and assigns, to connect the street railway tracks authorized by the foregoing said ordinance and agreement at the intersection of Woodmere Avenue and Fort Street, near Woodmere Cemetery, so that cars may be operated between the street railway track on Woodmere Avenue, and the street railway track on Fort Street, so that the street railway line on the avenues aforesaid, may be operated in connection with the track of the said Detroit United Railway and its line on Fort Street.**

**Sec. 2. The said Detroit United Railway, its successors and assigns is also hereby authorized to change its single track on Fort Street from the point or junction at Woodmere Avenue aforesaid and the Dearborn Road, so-called, to a double track street railway. Provided, however, in consideration of this grant, the said Detroit United Railway shall agree to operate its cars thereon so that between the hours of 5:45 and 7:15 in the forenoon, and 5:30 and 7:00 in the afternoon, a car shall pass in each direction over the route between the junction of Dearborn Road and the River Rouge Road in the Village of Delray and the intersection of the westerly city limits of the City of**

Detroit with Dix Avenue every twelve (12) minutes; and over the same route at other hours between 5:45 a. m. and 11:30 o'clock p. m. not less frequently than twenty-four (24) minutes apart. Said through service shall not begin later than May 1st, 1901.

Sec. 3. This ordinance and agreement, and all the respective rights thereby granted and created, shall continue in force for the period of thirty (30) years from the 14th day of May, 1898.

Sec. 4. The Detroit United Railway, its succesors or assigns, shall file a written acceptance of this ordinance and agreement within ten days after the passage thereof.

PETER B. DELISLE,
*Supervisor.*

JOSEPH SCHAEFER,
*Justice of the Peace.*

JOHN WARNCKE,
*Township Clerk.*

(Seal)

I hereby approve of the foregoing ordinance and agreement.

WM. H. H. MCDONALD,
*Highway Commissioner.*

Dated, March 6th, 1901.

## EXHIBIT "M"

### WOODMERE CEMETERY TO DEARBORN ROAD.

It is hereby resolved, agreed and consented by the Township Board of the Township of Springwells, Wayne County, Michigan, that the Fort Wayne & Elmwood Railway Company, a corporation organized and existing under the laws of the State of Michigan for the construction and operation of a street railway in the City of Detroit and said Township, its successors and assigns, is hereby authorized, licensed and empowered to lay and maintain a track for a street railway, and thereupon to operate and run street railway cars at any time during the term of this agreement as follows:

The said Fort Wayne & Elmwood Railway Company, whenever it can lawfully acquire the right of way therefor, or whenever a street shall be opened up, may, and it is hereby authorized to lay its track and maintain and operate its street railway as above described, between some point at the present entrance to Woodmere Cemetery directly across in a southerly direction to the Dearborn road, so-called, and upon the completion of said track as above described, if, in the judgment of the officers of said Fort Wayne & Elmwood Railway Company, it shall be deemed advisable, the company are hereby authorized and empowered to remove the portion of the company's track lying between the intersection of the Dearborn road and Fort street and the intersection of the right of way or street above described and the Dearborn road, and to cease to maintain a track and operate and run street railway cars thereon.

The company shall have the privilege at any time during the term of this agreement of laying a double track on the whole or any portion of the routes heretofore authorized and now being operated, or herein or hereinafter authorized and operated in the Township of Springwells, except that portion of Fort street lying between Woodmere avenue and Dearborn road; but all tracks shall be laid in the center of the streets or roads as above specified, and said company shall have the right and privilege of constructing and maintaining street railway tracks and operating street railway cars upon all the streets and roads upon which they are permitted to lay a double track as in the paragraph aforesaid.

The company may run its cars on all its lines in the Township of Springwells at a speed not to exceed twelve miles an hour, and may use horses, electricity, or any other suitable motive power except steam and the system of operating by electricity as at present used on the Dix and Woodward avenues for drawing or propelling said cars.

The term of this agreement shall be for thirty years from the date thereof; and the terms of all previous agreements between the Township Board of said township and said company shall be and are hereby extended to thirty years from the date of this agreement.

In collecting fare, the street railway commencing at the intersection of the Dearborn and River Roads, so-called; thence by the Dearborn Road and Fort Street to the eastern end of the company's tracks at the eastern limits of the City of Detroit shall be deemed one route, and from the eastern end of the company's track at the eastern limits of the City of Detroit to the intersection of the Dearborn Road and Fort Street via Clark Avenue and the River and Dearborn Roads shall be deemed another route, and each passenger traveling over either route continuously either way, over the whole or any portion thereof, shall pay one fare, the amount of which shall not exceed five cents. *Provided* that the fare of each passenger making a continuous trip on either or both routes within the Township of Springwells shall not exceed five cents.

*Provided, however,* That the company shall have the right, if its officers shall in their judgment deem it necessary, to require all passengers who are required to change cars on either route to procure a transfer ticket from the conductor or driver of the car on which they commence their trip, said transfer ticket to be good for a fare on the next connecting car only, and no passenger to be entitled to free transportation on any connecting car except upon the surrender of said transfer ticket.

The above agreement relative to fares shall take effect on or before September 1st, 1889.

The company shall run its cars and construct and maintain its road upon those portions of its railway included in this agreement as provided in previous agreements concerning portions of its railway heretofore constructed, provided that additional cars shall be operated as often as in the judgment of the officers of the company public convenience shall require.

*Provided,* that an additional car shall be operated on Fort street from the western limits of the City of Detroit to the intersection of Fort street and the Dearborn road,

so-called, at least every hour each way during thirteen hours of each day, leaving Clark Avenue in the City of Detroit on its last trip westward bound at eleven o'clock P. M.

*Provided further,* That cars shall be operated continuously at least every twenty-five minutes for thirteen hours, and that the cars leaving the intersection of Clark Avenue and Fort Street in the City of Detroit westward bound at ten and eleven o'clock P. M. on each and every day shall be operated continuously from the western limits of the City of Detroit to the intersection of the River and Dearborn Roads, so-called, in the village of Delray.

In witness whereof, the parties hereto have subscribed to this agreement this fifth day of August, A. D., 1889.

JOSEPH H. CLIXBY,
*Supervisor.*

FRANK HIGGINS,
*Clerk.*

FREDERICK B. BEATCHER,
*Justice of the Peace.*

ALEXANDER E. RIOPELLE,
*Justice of the Peace,*

LOUIS SCHMIT,
*Highway Commissioner.*

Being the Township Board of the Township of Springwells, Wayne County, Michigan.

## EXHIBIT "O."

**TOWNSHIP OF HAMTRAMCK**

**to**

**HENRY PLASS, et al.** **May 7, 1891**
**No. 163.**

### GRATIOT AVENUE.

1. Whereas, Henry Plass, Emil Stroh, John M. Brewer, George Hendrie, Cameron Currie, and Strathearn Hendrie, and their associates and assigns are about to organize a railway company for the purpose of constructing, purchasing a railway in, along and through Gratiot Avenue from the Easterly limits of the City of Detroit to the Easterly limits of the Township of Hamtramck, through the said Township of Hamtramck; therefore,

It is agreed by the Township Board of Hamtramck, and the Highway Commissioner of said Township assenting to and ratifying the same, that consent, permission and authority is hereby given to the said Henry Plass, Emil Stroh, John M. Brewer, George Hendrie, Cameron Currie, Strathearn Hendrie, and their associates and assigns, to lay, construct, maintian and operate a single or double track railway, with suitable switches, turn-outs and turn-
Route tables, in, along and through the said street or highway known as the Gratiot Road, through the said Township of Hamtramck, from the Easterly limits of the said Township to the Westerly limits thereof, and the same to keep, maintain and use.

2. The track of said railway shall be laid so as to
Construction obstruct as little as possible the free passage of vehicles and carriages along said highway and shall be laid on the roadbed of said highway in so far as the same is feasible. And the said grantees, their associates, or assigns, shall construct and have the said railway in operation by the first day of January, A. D. 1892, unless
Time to Build prevented by strikes or riots, and cars run at least every .....the power to be used to be the same as used on the Gratiot Avenue line in Detroit now or hereafter.

3. The said grantees and their assigns shall maintain
Crossings proper and safe crossings at all cross roads and streets,

and at the main and principal entrance to all farms along its line.

4. The said grantees, their associates and assigns, organized into a railway company under the laws of this State, shall be entitled to charge not more than five cents for the carriage of any one single passenger for one continuous trip over that portion of the railway within said Township until incorporated into the Detroit city limits. Fare

5. If said grantees, their associates and assigns, should desire to build, maintain and operate said line of railway or any part thereof on a private way obtained by them lying substantially parallel to said Gratiot Road on either side thereof, the same shall be considered as a compliance with the terms and requirements of this contract and consent. Private Right-of-Way

6. The written consent of the said grantees to this contract and consent shall be filed with the Township Clerk within ten days from this date. Consent

May 7, A. D. 1891.

ROGER ECHLIN,
RICHARD GIFF, JR.,
COLUMBUS BURNETT,
*Township Board.*

WILLIAM BOEHMER,
*Highway Commissioner.*

## EXHIBIT "P"

**Franchises and Ordinances, Township of Hamtramck Franchise Granted by the Township of Hamtramck to the Rapid Railway Company, March 6, 1894.**

**No. 393**

**Resolved, That permission and authority be, and the same is hereby granted to the Rapid Railway Company, a corporation duly organized and existing under the laws of the State of Michigan, and to its grantees and assigns, or to any person or company succeeding to its property rights, to locate, establish, extend, use, maintain, operate and own a street railway on, along and through the Gratiot Road, so-called, so far as the same lies within the limits of this Township, and upon such other highways or roads as may be hereafter agreed upon by and between this Township and the said The Rapid Railway Company, with all necessary and convenient poles and wires, tracks, turnouts, side tracks, switches, bridges and culverts, and to run and maintain thereon cars for the carriage of passengers, packages, personal baggage and merchandise, during its corporate life, not exceeding thirty years, upon the following terms and conditions:**

**1. Said The Rapid Railway Company, within thirty days after it shall have obtained the necessary rights and franchises from the City of Mount Clemens and the Township of Clinton, Warren and Erin, in the County of Macomb, and the Township of Grosse Pointe, in the County of Wayne, to enable it to build a continuous line through said Townships and the Township of Hamtramck running to or near the Court House, in the City of Mount Clemens, shall commence the necessary proceedings to obtain from the Detroit & Erin Plank Road Company the right to run along said Gratiot Road, and shall in good faith zealously prosecute such negotiations, and if unable to obtain the necessary permission from said Detroit & Erin Plank Road Company by negotiation, shall begin and prosecute with all due speed the necessary legal proceeding for the acquiring of such right by condemnation, and shall within twelve months of the acquiring of such rights either by negotiations or condemnation, have said road built and**

equipped with cars, running to or near said Court House in the City of Mount Clemens, unless prevented by injunction or order of Court, or by stress of weather, or by the happening of some unusual event which the said Railway Company could not have reasonably anticipated and prevented.

2. The rate of fare to be charged by said Railway Company for the carriage of passengers shall be regulated by the Township, except that such fare shall not be reduced without the consent of said Company below five cents for the carriage of one passenger a single trip within said Township to the City Hall in the City of Detroit.

3. The rails of the railway tracks to be laid by said company shall conform to the grade of the highway as now or may be hereafter established, and shall be so constructed as least to inconvenience or obstruct public travel thereon.

4. The cars to be used by said The Rapid Railway Company shall be at all times ir style, equipment and accommodation of the best, and shall be provided with a suitable apparatus for warming during the winter months.

5. No cars shall be allowed to stop on crosswalks or in front of any intersecting street or highway, except to avoid a collision or prevent injury to persons on the street, and when the conductor, driver or operator of any car is requested to stop at the intersection of streets to receive or let off passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

6. None but careful, prudent and sober men shall be employed to take charge of the cars while on the road, and they shall use every precaution not to injure teams, carriages or persons on foot.

7. The cars shall at all times be entitled to the track, and any vehicle on the track of such railway shall turn out when the cars approach so as to leave the track unobstructed, and the driver of any vehicle refusing to do so shall be liable to a fine not to exceed five dollars on conviction before any Court of Jurisdiction in the Township of Hamtramck.

8. Nothing in this franchise shall be construed to prevent the Township Board from authorizing the laying down of pavement, water or gas pipes, or sewers, or repairing the same or subjecting the street to any other legitimate use not inconsistent with such franchise, but without liability to said Street Railway Company.

9. The said The Rapid Railway Company shall be allowed to use either the electric overhead trolley system

or any other electrical or other mode of power to propel its cars which may run on its said railway.

10. This franchise shall be void unless said The Rapid Railway Company shall within ninety days of the date hereof accept the same in writing.

11. The franchise hereby granted will lapse as above stated, in case the franchise of Grosse Pointe, Warren, Erin and Clinton are not obtained as herein provided, or unless the franchises already assigned to the said Rapid Railway Company by Reilly, Huebner and Erskine are not sustained by the Courts.

## EXHIBIT Q and R

### TOWNSHIP OF GROSSE POINTE

Franchise Granted by the Township of Grosse Pointe to the Rapid Railway Company, March 10, 1894.

At a meeting of the Township Board, held in the office of said Board, in the Township of Grosse Pointe, on the 10th day of March, 1894.

Present:

Victor L. Vernier, Justice of the Peace,
Robert Trombley, Justice of the Peace,
Frank C. Schattler, Supervisor,
Geo. H. Kelly, Town Clerk,
William Diegel, Highway Commissioner,

Offered the following preamble and resolutions:

Whereas, The Township Board of the Township of Grosse Pointe, in the County of Wayne, and State of Michigan, did, on the 18th day of May, 1893, by resolution unanimously adopted, give and grant to Cornelius J. Reilly, George C. Huebner and Byron R. Erskine, and their assigns, the right to build, construct, maintain, use and operate a street railway in, along and upon the Gratiot Road, within the limits of said Township upon certain conditions and terms herein mentioned, as more fully appears by the record hereof.

And Whereas, The Rapid Railway Company, a street railway corporation organized under the laws of the State of Michigan, is the assignee of said Reilly, Heubner and Erskine, and has by assignment duly acquired all of the rights of said original grantees.

And Whereas, Said The Rapid Railway Company proposes to proceed to the building of a street railway in ac-

cordance with the terms of said grant as soon as necessary permission and consent can be obtained from the Detroit & Erin Plank Road Company, either by negotiation or, if that fails, by condemnation or by other legal proceedings.

Now Therefore, be it Resolved, That permission and authority be and the same is hereby granted to The Rapid Railway Company, a corporation duly organized and existing under the laws of the State of Michigan, assignee of said Reilly, Huebner and Erskine, and to its grantees and assigns, or to any person or company succeeding to its property rights, to locate, establish, extend, use, maintain, operate and own a street railway on, along and through the Gratiot Road, so-called, so far as the same lies within the limits of this Township, and upon such other highways or roads as may be hereafter agreed upon by and between this Township and said The Rapid Railway Company, with all necessary and convenient poles and wires, tracks turn-outs, side-tracks, switches, bridges and culverts, and to run and maintain thereon cars for the carriage of passengers, packages, personal baggage and merchandise during its corporate life and during the corporate life of any other company or corporation succeeding to its property rights, but not to exceed the period of thirty years, upon the following terms and conditions:

1. Said The Rapid Railway Company, within thirty days after it shall have obtained the necessary rights and franchises from the proper City and Township authorities to enable it to build a continuous line from the easterly city limits of Detroit, to or near the Court House in the City of Mount Clemens, shall commence the necessary proceedings to obtain from the Detroit & Erin Plank Road Company the right to run along said Gratiot Road and shall in good faith, zealously prosecute such negotiations, and if unable to obtain the necessary permission from said Detroit & Erin Plank Road Company by negotiation, shall begin and prosecute with all due speed the necessary legal proceedings for the acquiring of such right by condemnation, and shall, within twelve months of the acquiring of such right, either by negotiation or condemnation have said road built and equipped with cars running to or near said Court House in the City of Mount Clemens, unless prevented by injunction or order of the Court, or by stress of weather, or by the happenings of some unusual event which the said Railway Company could not have reasonably anticipated and prevented.

2. The rate of fare to be charged by said Railway Company for the carriage of passengers shall be regulated by the Township, except that such fare shall not be re-

duced without the consent of said Company, below five cents for the carriage of one passenger a single trip within the limits of this Township, nor below five cents for a single fare from the French Lane to the Detroit City Hall.

Said Company shall give not less than four round trips per day north of the French Lane, and south of the French Lane every thirty minutes from 6 A. M. to 9 P. M. and as much oftener as travel will warrant.

3. The rails of the railway track to be laid by said Company shall conform to the grade of the highway as now or may be hereafter established, and shall be so constructed as least to inconvenience or obstruct public travel thereon, and on a line about a rod from the present plank and about as much over the ditch as at present in Hamtramck.

4. The cars to be used by said The Rapid Railway Company shall be at all times in styles, equipment and accommodation of the best, and shall be provided with a suitable appartus for warming during the winter months.

5. No cars shall be allowed to stop on cross-walks, or in front of any intersecting street or highway, except to avoid a collision or prevent injury to persons on the street, and when the conductor, driver or operator of any car is requested to stop at the intersection of streets to receive or let off passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

6. None but careful, prudent and sober men shall be employed to take charge of the cars while on the road, and they shall use every precaution not to injure teams, carriages or persons on foot.

7. The cars shall at all times be entitled to the track, and any vehicle on the track of such railway shall turn out when the cars approach, so as to leave the track unobstructed, and the driver of any vehicle refusing to do so shall be liable to a fine not to exceed five dollars on conviction before any Court of jurisdiction in this Township.

8. Nothing in this franchise shall be construed to prevent the Township Board from authorizing the laying down of pavement, water or gas pipes or sewers, or repairing the same or subjecting the street to any other legitimate use not inconsistent with such franchise, but without liability to said Street Railway Company.

9. The said The Rapid Railway Company shall be allowed to use either the electric overhead trolley system, or any other electrical or other motive power to propel its cars, which may be run on its said railway.

10. This franchise shall be void unless said The Rapid Railway Company shall within ninety days of the date hereof accept the same in writing.

VICTOR L. VERNIER, *Justice of Peace.*
ROBERT TROMBLEY, *Justice of Peace.*
FRANK C. SCHATTLER, *Supervisor.*
GEORGE H. KELLY, *Township Clerk.*
WILLIAM G. DIEGEL, *Comm. of Highways.*

## EXHIBIT S.

## SUPPLEMENTARY FRANCHISE GRANTED BY THE TOWNSHIP OF HAMTRAMCK TO THE RAPID RAILWAY COMPANY, NOVEMBER 28, 1894.

At a meeting of the Township Board of the Township of Hamtramck, held at its office on the twenty-eighth day of November, 1914.

Present:

Herman J. Martens, Justice of the Peace.
William Finn, Justice of the Peace.
George Howcroft, Supervisor.
Charles R. Dimick, Town Clerk.
William Lynch, Jr., Highway Commissioner.

Offered the following resolution:

Resolved, that permission and authority be and the same is granted to The Rapid Railway Company, and to its grantees and assigns, and to any person or company succeeding to its property rights, to locate, establish, extend, use, maintain, operate and own a street railway on, along and through the Butler Road, now called Harper Avenue, from a connection with the route heretofore granted it on the Gratiot Road, easterly along said Butler Road, or Harper Avenue, to the dividing line between the Townships of Hamtramck and Grosse Pointe, also on and along the northerly side of Harper Avenue westerly from the Gratiot Road to St. Charles Street; with all necessary and convenient poles and wires, tracks, turnouts, sidetracks, switches, bridges and culverts, and to run and maintain thereon cars for the carriage of passengers, packages, personal baggage and merchandise during its corporate life, and during the corporate life of any company or corporation succeeding to its property rights, upon the following terms and conditions:

1. Said Railway, so far as the same extends easterly from the Gratiot Road, shall be equipped and put in operation within one year of the completion of the line of said The Rapid Railway Company heretofore authorized to be built on Gratiot Road, and so much thereof as extends westerly from said Gratiot Road whenever convenient for the purpose of connecting with any street railway line built in the City of Detroit, the connection to be made within two years after the completion of the railway in the City of Detroit, on Harper Avenue.

2. The rate of fare to be charged by said Railway for the carriage of passengers over said route shall be regulated by the township, except that such fare shall not be reduced without the consent of the Company below five cents for the carriage of one passenger a single trip.

3. The provisions of paragraph 3, paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8 and paragraph 9 of the franchise heretofore granted to said The Rapid Railway Company shall govern the operation of said railway along the route hereby granted.

4. Neglect or failure of said grantee to operate its railway over the route hereby granted shall in no wise effect the rights heretofore granted said The Rapid Railway Company to operate a line on Gratiot Road, nor shall the failure to operate any part of the route hereby granted affect the rights of the grantee as to the residue thereof.

5. This franchise and the permisison hereby granted shall cease and be utterly void unless said The Rapid Railway Company shall within ninety days of the date hereof accept the same in writing.

HERMAN J. MARTENS,
*Justice of the Peace.*

WILLIAM FINN,
*Justice of the Peace.*

GEORGE HOWCROFT,
*Supervisor.*

CHARLES R. DIMICK,
*Clerk.*

WILLIAM LYNCH, JR.,
*Highway Commisisoner.*

## EXHIBIT "T"

### THE DETROIT RAILWAY

Section 1. That consent, permission and authority are hereby granted to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors or assigns, when organized into a corporation under Chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named The Detroit Railway, to construct, maintain, use and operate single and double track street railways, with all necessary and convenient turnouts, turntables, side-tracks, switches and connections in and along the streets, avenues and public places in the City of Detroit, as hereinafter provided, and the same to keep and maintain and to operate thereon street railways for and during the term hereinafter specified and in the manner and upon the conditions set forth in this ordinance.

Sec. 2. That the said grantees, their associates, successors and assigns are hereby authorized to construct, maintain and operate street railways in, upon and through the following streets, avenues and public places, to-wit:

(a) A double track in, along and through Warren avenue from the western city limits, eastwardly to Beaubien street; thence along and upon Beaubien street southerly to Forest avenue; thence along and upon Forest avenue easterly to the city limits, or as near thereto as may be practicable.

(b) A double track in, along and upon Fourteenth avenue from the northerly city limits to Bagg street; thence a single track in, along and upon Bagg street eastwardly to Cass avenue; thence in, along and upon Cass avenue southerly to the head of Clifford street; thence in, along and upon Clifford street southerly to the intersection of Henry street. Also a single track on Fourteenth avenue connecting with the double track at the intersection of Bagg street southerly to Locust street; thence in, along and upon Locust street eastwardly to Grand River avenue, crossing said avenue and extending eastwardly in, upon and along Henry street to Clifford street, connecting with a double track at said intersection; thence a double track in, along and upon Clifford street southerly and eastwardly to Griswold street; thence along and upon Griswold street to

State street; thence in, along and upon State and Gratiot avenue, eastwardly to Miami avenue; thence in, along and upon Miami avenue northwesterly to Witherell street; thence in, along and upon Witherell street northerly to Adams avenue; thence in, along and upon Adams avenue eastwardly to Hastings street. Also a single track connecting with the double track on Adams avenue northerly on Beaubien and Hastings street respectively to Custer avenue; thence westerly from Hastings and easterly from Beaubien street to Custer uniting with a double track on Oakland avenue; thence northerly in, along and upon Oakland avenue to the city limits.

(c) Also a single track railway, with the necessary turnouts, switches and sidings, in, along and upon Harper avenue from a point at the intersection of Field and Harper avenues westerly to Mt. Elliott avenue; thence in, along and upon Mt. Elliott avenue southerly to Forest avenue, extending thence by double track southerly on Mt. Elliott avenue to Kercheval avenue; thence in, along and upon Kercheval avenue eastwardly to Concord avenue; thence in, along and upon Concord avenue southerly to Jefferson avenue; thence in, along and upon Jefferson avenue eastwardly to a point on Jefferson avenue seventy-five feet east of the easterly line of the boulevard or Frontenac avenue.

(d) Also a double track railway connecting with the double track at the intersection of Adams avenue and Hastings street, in, along and upon Hastings street southerly to Sherman street; thence easterly by single track in, along and upon Sherman street to Joseph Campau avenue, connecting with a double track thereon. Also a single track connecting with the double track at the intersection of Hastings and Sherman streets southerly on Hastings street to Catherine street; thence in, along and upon Catherine street eastwardly to Joseph Campau avenue; thence in, along and upon Joseph Campau avenue northerly, uniting with the line on Sherman street, forming a double track on Joseph Campau avenue to Waterloo street; thence by single track in, along and upon Waterloo street eastwardly to Mt. Elliott avenue, connecting with the double track thereon. Also a single track extending from the intersection of Joseph Campau avenue and Waterloo streets northerly on Joseph Campau to Hendricks street; thence in, along and upon Hendricks street eastwardly to Mt Elliott avenue, connecting with the double track thereon.

(e) Also a single track railway with the necessary turnouts, switches and sidetracks in, along and upon Vinewood avenue from a point at the intersection of Warren

in, along and upon Porter street eastwardly to Twenty-fourth street; thence in, along and upon Twenty-fourth street southerly to the Detroit River.

(f) Also such tracks as may be necessary to connect operating tracks with barns, power houses, storage sheds, yards and repair shops, to be constructed under the supervision and subject to the approval of the Board of Public Works.

(g) Said grantees, their associates, successors and assigns are hereby granted all the privileges and rights which may be granted to any other street railway to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed on any bridge and approaches thereto crossing the Detroit River to Belle Isle Park.

All tracks provided for in this ordinance may be connected by suitable curves at their intersections.

Sec. 3. The railways in said streets shall be laid in the center thereof, if a single track; and if a double track the inside rail of each track shall be laid two feet five inches from the center of the street to enable two cars to pass on opposite tracks and leave a safe space between them; and the gauge of the tracks shall be four feet and eight and one-half inches. *Provided,* That where any other street railway company may have tracks in a street through which, in order to accommodate the public, it is necessary to operate the lines of said grantees, the Board of Public Works may direct the extension and construction of the tracks of said grantees, and the rails therein shall be laid in such portion and in such manner as shall be determined by the Board of Public Works.

All tracks shall be laid and constructed with girder grooved rails of not less than seventy-seven and one-half pounds weight to the lineal yard, with grooves upon the inner side of the rail; the upper surface of the inner head of the rail to be not more than one-fourth of an inch below the upper surface of the outer head of the rail; and such rail and the chairs, spikes, ties and tie-plates and other fastenings thereof shall be furnished and laid by the grantees under the supervision of the Board of Public Works, and the cost of such supervision shall be paid by said grantees through the Board of Public Works within thirty days after the Board shall have rendered a bill to said grantees for the cost of the same.

All paving or repaving or repairing of pavement upon any of the streets upon which said grantees, their associates, successors or assigns, shall hereafter construct, maintain and operate a street railway shall be done wholly

at the expense of the City of Detroit, both within and without the rails of said tracks; and after being paved or repaved by the city, the same shall be maintained and kept in repair by said City of Detroit; and there shall be no charge whatever, in any form or manner, against said grantees, their associates, successors and assigns, for said repaving and repairing of said streets and pavements; *provided,* however, that said grantees shall never disturb said pavement or foundation, except upon being granted permission by the Board of Public Works; and when said grantees shall so tear up, or disturb in any manner, the pavements of any streets or foundation thereof, or disturb the existing foundation which the city is repaving, said grantees shall pay to the City of Detroit, through the Board of Public Works, all expenses of said Board for supervision of said work and for repairing and replacing as before it was disturbed by said grantee, and of maintaining the same to the satisfaction of said Board thereafter, until the street or trackway is repaved; *provided,* that such maintenance shall not exceed a term of three years if the street is not repaved by that time.

*Provided,* That if the Common Council declares it a public necessity to widen the existing pavement of any street on account of the construction, maintenance or operation of any double track under and by virtue of this ordinance, the city having made such widening of such pavement, then the pavement over such portion widened as may be so made necessary shall be done at the expense of said grantees herein named, their successors or assigns, under the supervision of the Board of Public Works.

This section shall not be construed as relieving the grantees, their successors or assigns, from paving in accordance with the general street railway paving ordinance at their sole expense, under the supervision of the Board of Public Works, all tracks and the space between double tracks put by or for them into streets already paved at the time of first construction of said tracks in such paved streets; but such work shall be done by the grantees, their successors or assigns, at their sole expense, under the supervision of the Board of Public Works, said supervision to also be at expense of the grantees, their successors or assigns, who shall restore the street to a condition satisfactory to said Board of Public Works; and thereafter the care of such pavements shall be at the expense of the city, as heretofore provided in this section.

In all unpaved streets wherein the grantees are duly authorized by the Common Council to construct street railway tracks under the provisions of this ordinance, the

preparation of the road bed shall be made by the grantees, their successors or assigns, the excavation to extend seven inches below the under side of the cross ties upon which the tracks are laid; but the six inches of concrete required by the ordinance as foundation for ties to rest upon shall be laid by and at the expense of the city at the time of the construction of the tracks; the city not being required, however, to do the paving between the tracks until the street is paved. The Common Council may, however, in its discretion, order the paving of the tracks on unpaved streets to be done at city expense contemporaneously with the first construction of said tracks.

The city shall keep the pavement between the rails cleaned in the same manner as the remainder of the street; but this section shall not be construed as requiring the City of Detroit to remove snow and ice from the roadways of said grantees; and all such snow and ice shall be removed by said grantees, at their expense and in such a manner as not to obstruct or endanger the ordinary use of the street for persons and vehicles, to the satisfaction of the Board of Public Works.

Sec. 4. All street railways constructed, maintained and operated under and by virtue of this grant shall be constructed, maintained and operated by the overhead trolley wire system of electricity, and said grantees, their associates, successors and assigns, are hereby authorized to erect and maintain a full electrical overhead equipment, with all the necessary poles, arms, feed, trolley and other wires necessary for a complete electrical overhead equipment and the propulsion of cars, together with the connecting poles, wires and equipment, with the power plant, barns, repair shops and working premises of said grantees, their associates, successors and assigns.

The construction of said electrical equipment in said streets shall be subject to the supervision of the Board of Public Works of said City of Detroit, at the grantees' expense, and the said electrical equipment shall be first-class in all respects and of the most modern style and manufacture, and the cost of such supervision shall be paid by said grantees, through the Board of Public Works, within thirty days after the board shall have rendered a bill to the said grantees for the cost of the same.

All poles within the two-mile circle shall be of iron and approved pattern; but outside the two-mile circle said poles may be of wood of uniform pattern, all subject to the approval of the Board of Public Works. All planks or stone flags in sidewalks or sidewalk intersections, cut, broken or defaced by the setting of poles, and all damage

to other property, public or private, shall be paid for by the said grantees, through the Board of Public Works.

Provided, That if there shall be already on any street wherein the said grantees, their associates, successors and assigns, erect wires for the said electrical overhead equipment, a pole or poles suitable for the use of the said grantees, their associates, successors and assigns, they shall, upon so being directed by the city, use the said pole or poles for their purpose, instead of erecting a new pole or poles. The Board of Public Works shall be the judge of the suitability of the pole or poles, and prescribe the manner in which they are to be used by the said grantees, their associates, successors and assigns.

*Provided further,* That if at any time the City of Detroit may desire to erect a pole or poles for the purpose of carrying electric wires for public service in the place occupied by a pole or poles owned by the said grantees, their successors, associates and assigns, then the said City of Detroit may remove the said pole or poles owned by the said grantees, their associates, successors and assigns, and replace the same by the city's pole or poles. The removing and replacing to be so done as not to interrupt the service of the railways or said grantees, their associates, successors and assigns, and the said grantees shall have the right to use the city's pole or poles so substituted to the same extent and in the same manner that it did use the pole or poles removed.

Sec. 5. It shall be the duty of said grantees, their associates, successors and assigns, to provide cars of modern design for service and comfort, heated, lighted, vestibuled and carrying an approved life guard, numbered and carrying signboards by day and colored signal lights after sunset, to distinguish their respective routes. They shall be kept clean inside and out and shall not be overcrowded. Each car shall be in charge of a uniformed conductor, who shall clearly pronounce the names of cross streets as the car approaches them.

Sec. 6. No cars shall be allowed to stop on any crosswalk or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street. When cars or trams are stopped at the intersection of streets, they shall be so stopped as to leave the rear platform of the rear car slightly over the crossing. Passengers shall not enter or leave or attempt to enter or leave the cars when in motion, and conductors are hereby authorized to make all reasonable efforts to prevent them

from doing so, provided, however, that this shall not be construed to justify the use of or the threat to use physical force on the part of the conductor.

Sec. 7. The cars of said grantees, their associates, successors and assigns, shall at all times be entitled to the track, and any vehicle upon the track of said railway shall turn out so as to leave the track unobstructed, and any driver of any vehicle refusing to do so shall be liable to a fine not exceeding ten dollars ($10) upon a conviction in the Recorder's Court of the City of Detroit, and upon the imposition of any such fine and costs the court may make a further sentence that in default of payment thereof such offender shall be imprisoned in the Detroit House of Correction for any length of time not exceeding ten days. Permits shall not be issued to move buildings or large and bulky articles on such streets in such manner as to interfere with the overhead equipment or the operation of the cars upon the railways of the said grantees, their associates, successors and assigns, unless at the time of making application the person desiring the permit shall file with the Board of Public Works the written consent of the said grantees, their associates, successors and assigns, or a resolution granting such permission adopted by the Common Council and approved by the Mayor. The party in whose favor such permission is granted shall pay to said grantees, their successors or assigns, any and all expenses and damages caused by the removal or disturbance of the wires, poles and premises of said railway. The permit, if issued, shall conform to the conditions as to the time and route laid down in the grantees' consent. The Mayor shall have authority to direct the temporary cessation of the running of cars during parades or processions of a public nature. The fire Commissioner or Chief of the Fire Department shall also have authority to stop the running of cars in case of a conflagration when deemed expedient.

Sec. 8. Said grantees shall employ careful, sober and prudent agents, conductors and motormen to take charge of its cars while in operation.

Motormen shall keep vigilant watch for all teams, carriages or persons on foot either on the track or moving toward it, and at the first appearance of obstruction or of danger of such teams, carriages or persons the cars shall be stopped in the shortest time and space possible.

All conductors and motormen shall be citizens of the United States and voters under the laws of Michigan, and

ten hours shall constitute a day's employment for such conductors and motormen, to be completed inside of twelve consecutive hours.

Sec 9. Said grantees may run their cars at a rate of speed not exceeding an average of fifteen miles per hour for the whole length of any route.

Sec. 10. The rates of fare for a single ride for a continuous trip any distance in one direction over any one of the routes hereinbefore described shall be five cents, for which the passenger shall be entitled to such ride and to a ticket or transfer check, to be given to the passenger, by the conductor, on the car, good for a ride over any other line or route operated by the said grantees, their associates, successors and assigns, provided such ticket is presented on the next regular car of such other route within fifteen minutes after such passenger leaves the car on which he paid the five-cent fare and received said ticket.

Said grantees shall keep on sale on their cars in service between the hours of 5:45 a. m. and 8 o'clock p. m. of each day tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said grantees for a single fare for any distance in either direction over the line or route on a car, on which it is presented between the hours of 5:45 a. m. and 8 p. m., and a passenger presenting such ticket between said hours shall be entitled to a transfer good for a continuous ride over any other line or route of said grantees, as provided for passengers paying the full fare of five cents.

Said grantee shall also keep on sale on their cars in service between the hours of 8 o'clock p. m. and 5:45 o'clock a .m. of each day tickets to be sold in strips or packages of six tickets for twenty-five cents, each of which tickets shall be accepted by said grantee for a single fare for any distance in either direction over the line or route upon a car which the same is presented, and a passenger presenting such a ticket shall be entitled to a transfer, good for a continuous ride over any other line or route of said grantee, as provided for passengers paying the full fare of five cents.

All children under six years of age, accompanied by parent or guardian, shall ride free.

In either of the foregoing cases, where transfers are provided for should there be no car within the fifteen minutes, then the said passenger shall be entitled to take the first car that starts on the track to which the transfer was issued.

The rates of fare, as above provided, shall not be reduced during the period of this ordinance without the consent of said grantees, their successors or assigns; nor shall the rates of fare as above provided be exceeded during the period of this ordinance either with or without the consent of the city, and any attempt on the part of the grantees, their successors or assigns, to enforce the collection of fares in excess of those provided in this ordinance, either with or without the consent of the city, shall invalidate all of the provisions of this ordinance, and all the rights of the grantees, their successors and assigns, to construct, maintain, use and operate street railways on or in the streets of the City of Detroit shall thereupon cease and become null and void.

Sec. 11. The powers, privileges and rights conferred and obligations imposed by this ordinance shall be deemed a contract and continued to the said grantees, their associates, successors and assigns for the period of thirty (30) years from and after the date of its adoption.

Sec. 12. Said grantees, their associates, successors and assigns shall have power and are hereby authorized to organize themselves into a body politic and corporate under the laws of the State of Michigan, and all the powers and privileges hereby granted and conferred to and upon said grantees by this ordinance shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the Common Council.

Sec. 13. Cars going in the same direction shall not approach within forty feet of each other, unless in case of accident or at terminals, or when run in trains or for the purpose of connecting the same together.

Sec. 14. The said grantees, their associates, successors and assigns shall pay taxes on its real estate and on its personal property, including its rolling stock, tracks, wires, poles and motors, the same as an individual; provided, however, that in consideration of the reduced rates of fare fixed by this ordinance, and other valuable considerations, the franchise herein granted and earnings of said railway shall in no manner be subject to taxation.

Sec. 15. Said grantees, their associates, successors and assigns shall indemnify and save harmless the City of Detroit from any and all claims for damages for which said city may be or become liable to pay by reason of the giving or granting of the authority or privileges hereby granted, or by reason of any disaster to life or limb, or property, by the running of cars by said grantees, their associates, successors and assigns; and sufficient bond in

the penal sum of one hundred thousand dollars, to be approved by the Mayor, Common Council and Controller of the City of Detroit, and deposited with said Controller, conditioned to fully indemnify and save harmless the City of Detroit from any and all claims for damages as in this section before stated; *provided,* that neither in the construction nor in the operation of their electrical equipment shall said grantees, their associates, successors or assigns, do any damage to sewers, conduits or cables, gas or water pipes; and the bond provided for in this section shall be held to cover all such damages, provided, that the liability shall not be occasioned by reason of the defective construction or condition of the street pavements, which it is the duty of said City of Detroit to construct and maintain in good condition, under the terms of this grant, or by virtue of its public duty as a municipality.

To absolve the grantees, their successors or assigns, from liability as provided in the latter clause, however, it shall be necessary for them to have given notice to the Board of Public Works, at the office of said Board, of such defects in the pavement between the hours of 8 a. m. and 4 p. m. on any day on which the office of said board is open for public business, and until such notice is given as aforesaid and for six hours thereafter, the responsibility for damage shall lie with the grantees, their successors or assigns, and be covered by the indemnity bond provided for in this section.

Sec. 16. Said grantees, their associates, successors and assigns shall issue and accept free transfer tickets to and from other street railways at the intersection of such lines whenever such other street railway shall grant to the public and passenger like privileges; *provided,* that such transfer ticket shall be presented by the passenger receiving the same on one line on the next regular car of the other line passing the intersection of such lines.

Sec. 17. The right is hereby reserved to the Common Council of the City of Detroit to make by ordinance such reasonable rules as may from time to time be deemed necessary to protect the interests, safety, welfare or accommodation, and running of cars for the public in relation of said railways; *provided,* further, that the cars on each and every route shall be not run further apart than ten minutes, excepting between the hours of 10 p. m. and 5 a. m.

Sec. 18. The City of Detroit hereby reserves the right to repeal, alter or amend this ordinance in case the said grantees, their associates, successors or assigns, shall vio-

late any of its terms or conditions; *provided,* that written notice of such violation shall be served on such grantees, their associates, successors or assigns, thirty days before such repeal, alteration or amendment, and that such violation shall continue during such thirty days; and provided, also, that if there is a dispute as to such violation, the question shall be determined by the courts in any proper suit or other proceedings; and provided, further, that after such judicial determination, should it be against the grantees, said grantees shall have thirty days in which to comply with the terms of the ordinance as constructed by the courts. Either party may enforce the terms of this agreement by suit or any judicial proceeding.

Sec. 19. The said grantees, their associates, successors and assigns, are also hereby authorized to construct, maintain and operate street railway lines on such other streets, avenues and public places and upon such other route or routes as the Common Council of the City of Detroit or other proper municipal authority may designate—said grantees having the first right to construct said additional lines or routes, provided they shall signify their acceptance of said route or routes in writing, filed with the City Clerk of the City of Detroit, within thirty days after the same has been lawfully designated by the proper municipal authority and due notice thereof given to said grantees, their associates, successors or assigns. Such additional lines shall be constructed and operated under all the provisions and conditions of this ordinance; provided, that nothing in this ordinance shall be construed to give the grantees, their associates, successors and assigns, any right or option to operate street railways on streets now occupied by or hereafter granted for lines of the Fort Wayne & Belle Isle Railway Company.

Whenever the Common Council shall decide that the establishment of a new route or the extension of any street railway line is necessary for public convenience and accommodation, it shall properly designate said route or extension and the terms and conditions under which it shall be constructed and operated, and shall offer the same to the grantees of this ordinance, giving them thirty days in which to accept the same and file a bond in the sum of ten thousand dollars for the construction thereof, and if accepted within said period, said grantees shall have one year thereafter in which to construct and put into operation said new route or extension.

*Provided,* That the rate of fare upon any street railway line which may be extended in accordance with the foregoing provision shall not in any manner be increased for a

single ride in or over the entire line, including such extensions.

If the grantees hereof shall fail to accept the said line or extension in the time provided above, the city may then grant the right to build and operate the same to any other party; *provided,* however, that the terms and conditions of the grant shall be the same as those previously offered to the grantees of this ordinance; and in making said grant to said new or other company, after it has been refused by the grantees hereof, the city may provide that the tracks of the said new company may be extended to and connected with the tracks of the grantees hereof at some point within one-half mile of the present Detroit City Hall, and that the cars of the said new company may be operated on the tracks of said grantees within said limit; and provided, further, that said new company shall pay to said grantees, their associates, successors or assigns, a reasonable compensation for a joint ownership of such tracks, poles, wires and appurtenances within said area, when declared necessary by the Common Council for the accommodation of the public, making said area free territory for existing routes or others that may be hereafter created. In case the value of said tracks and appurtenances cannot be agreed upon by the parties in interest, the same shall be submitted in arbitration for settlement, the grantees, their associates, successors or assigns, to choose one arbitrator, the party desiring to acquire the rights to choose another arbitrator, and the two thus chosen to select a third arbitrator, who shall determine such value, such decision to be final and binding upon the parties. In the event of the arbitration being prolonged to the inconvenience of the public, the Common Council shall have the right to permit such new party to use the tracks and appurtenances in said area, upon the said new party's filing with the City Controller a bond in such sum and with such sureties as shall be determined by the Common Council.

Sec. 20. Should any grant herein made be held by the courts to be illegal, it is hereby expressly ordained that the right of said grantees to construct, maintain and use and operate their lines or railway shall not thereby cease, but the same shall continue in full force and effect, subject to such limitations thereon with reference to such illegality as shall be lawful; and if any provisions of this contract, or any part thereof, be held invalid by the courts, such invalidity shall not affect the valid provisions of this agreement.

Sec. 21. Said grantees shall treat all passengers alike. Tickets shall be sold at uniform prices. No passes or free

tickets shall be given to anyone, except employes of said grantees.

Any officer or employe of said grantee violating this provision shall be subject to prosecution in the Recorder's Court and a fine for each offense, not to exceed fifty dollars and upon the imposition of any such fine and costs the court may make a further sentence that, in default of payment thereof, such offender shall be imprisoned in the Detroit House of Correction for any length of time not exceeding thirty days.

Sec. 22. The City of Detroit shall have the right to purchase at the expiration of said period of thirty years, all tracks, cars, motors, wires, poles, electric appliances and apparatus of said grantees, together with their power plant and other equipment necessary for the operation of its lines, at a price which shall be fixed by a board of arbitration to be constituted as hereinafter stated; *provided* said city shall give to said grantees, their associates, successors or assigns, written notice of its intention to make such purchase at least one year before the expiration of said thirty years, and shall proceed with and complete said arbitration. Said board of arbitration shall be appointed as follows: Three members by the said grantees, their associates, successors and assigns, three members of the Common Council of the City of Detroit, on the nomination of the Mayor, and three members to be selected by the six members thus appointed. If the six members shall be unable to agree upon any one or more of the remaining three members of said board then said remaining three members, or so many of them as shall not have been agreed upon, shall be appointed by the Circuit Court for the County of Wayne. In case either party shall neglect or refuse to appoint its own members for said board of arbitration, such members of said board shall be appointed in its behalf by said Circuit Court for the County of Wayne. In arriving at a fair price at which said purchase shall be made by the City of Detroit, such board of arbitration shall not take into consideration the value of this franchise or grant, but shall allow for the property to said grantees, their associates, successors or assigns, its fair value for street railway purposes, taking into consideration cost and natural depreciation. The price, terms of sale and times of payment agreed upon by said board of arbitration or a majority of the members thereof, shall constitute the basis of said sale, and both the City of Detroit and the grantees shall be bound to abide thereby. The property shall remain in possession of the grantees, their associates, successors and assigns, until the terms of

purchase have been complied with by the city, and the grantees, their associates, successors and assigns, shall be responsible for the continuous operation thereof, under the terms of this grant, until said terms are complied with.

Sec. 23. Said grantees, their associates, successors and assigns, in consideration of this ordinance and the adoption thereof on or before the twenty-fourth day of December, 1894, agree to fully equip and put into complete operation the lines of railway hereinbefore specifically mentioned, during the year 1895.

And said grantees shall deposit with the City Controller within thirty days after the adoption of this ordinance, as a guarantee for the construction of said railways, a bank certificate of deposit in the sum of fifty thousand dollars, which shall be forfeited to the city in case said grantees shall fail to construct and put into operation the said railways within the period hereinbefore mentioned, upon the completion of said railways within said period said certificate shall be returned to said grantees.

Sec. 24. The said grantees shall file with the City Clerk of the City of Detroit, within ten days of the date of the approval of this ordinance, their written acceptance of the provisions hereof, and shall, within thirty days thereafter, deposit with the City Controller of the City of Detroit, an approved bond in the sum of one hundred thousand dollars as security for the completion by said grantees, their associates, successors or assigns, of the said street railway lines as herein described, and also for the fulfillment and execution of all the terms and conditions of this ordinance; and in case of the default of said grantees, their associates, successors or assigns, said bond shall be forfeited to the City of Detroit in addition to the forfeiture of the franchise granted by this ordinance.

Sec. 25. This ordinance shall take immediate effect.

## EXHIBIT.

### SUPPLEMENTARY ORDINANCE—ADDITIONAL RIGHT OF WAY.

Section 1. Subject to all the provisions and requirements of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95, Howell's compilation of the statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, consent, permission and authority are hereby granted to said The Detroit Railway, to construct, maintain, use and operate street railway tracks in, along and through the streets and avenues in the City of Detroit, and the same to keep, maintain and use, and to operate railway cars thereon in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said original ordinance, namely:

(a) A double track in, along and through Livernois avenue, from the center of Dix avenue or road northerly to Toledo avenue; thence in, along and upon Toledo avenue easterly to Scotten avenue; thence in, along and upon Scotten avenue southerly to Porter street; thence in, along and upon Porter street easterly to Second street; thence in along and upon Second street southerly to Howard street; thence in, along and upon Howard street to Cass avenue; thence in, along and upon Cass avenue to Lafayette avenue; thence in, along and upon Lafayette avenue easterly to Shelby street, connecting with a loop line upon said street.

(b) A single track loop line with the necessary switches commencing at the point of intersection of Griswold and Rowland streets, connecting with the tracks heretofore authorized to be constructed on Griswold street; thence southwesterly in, along and upon Rowland street to Shelby street; thence southerly in, along and upon Shelby street to Jefferson avenue; thence in, along and upon Jefferson avenue, by single track, located on the northerly side of Jefferson avenue, by single track, located on the

northerly side of the present double track thereon, easterly to Griswold street; thence in, along and upon Griswold street southerly to the foot of Griswold street; also from the intersection of Woodbridge and Griswold streets by a proper switch extending in, along and upon Woodbridge street easterly to Bates street; thence in, along and upon Bates street southerly to the foot of Bates street, and northeasterly to Farmer street; thence in, along and upon Farmer street northwesterly to Gratiot avenue, there forming a single track loop line connecting with the tracks heretofore authorized to be constructed by said grantee.

(c) A double track from the intersection of Gratiot avenue, Randolph street and Miami avenue, connecting with the tracks heretofore authorized thereon; thence easterly in, along and upon Macomb street to Hastings street; thence northerly in, along and upon Hastings street, connecting with the tracks heretofore authorized to be constructed upon Catherine and Sherman streets, respectively, thereby avoiding the necessity of connecting the lines upon Sherman and Catherine streets with Adams avenue on Hastings street, as provided by the original ordinance.

(d) A double track extension commencing seventy-five feet easterly of the east line of the Boulevard on Jefferson avenue and connecting with the tracks heretofore authorized thereon; thence easterly in, along and upon Jefferson avenue to Field avenue; thence northerly in, along and upon Field avenue to Champlain street, connecting with the tracks of the Fort Wayne & Belle Isle Railway Company's tracks thereon.

(e) A single track from the intersection of Fourteenth avenue and Milwaukee avenue, connecting with the tracks heretofore authorized thereon, along and upon Milwaukee avenue easterly to Twelfth street; thence in, along and upon Twelfth street, northerly to the northern city limits.

(f) In lieu of the track heretofore authorized to be constructed on Warren avenue southerly on Vinewood avenue to Porter street, a single track from the intersection of Warren avenue and Scotten avenue, in, along and upon Scotten avenue southerly to Toledo avenue, connecting with the track thereon with all the necessary switches and turnouts on said Scotten avenue.

(g) A single track commencing at the intersection of Scotten avenue and Buchanan street, connecting with the tracks authorized on Scotten avenue; thence in, along and

upon Buchanan street westerly to Livernois avenue; thence in, along and upon Livernois avenue southerly to Michigan avenue, with the necessary switches and turnouts.

(h) A single track from the intersection of Hastings street and Piquette avenue, in, along and upon Piquette avenue westerly to Beaubien street; thence by a double track in, along and upon Beaubien street to Hamlin avenue; thence easterly in, along and upon Hamlin avenue to Oakland avenue, connecting with the track heretofore authorized on said street. Said last mentioned track to be in lieu of the loop line north of Piquette avenue on Hastings, Custer and Oakland streets as described in the original ordinance.

(i) In lieu of the double track heretofore authorized to be constructed on Warren avenue between Fourteenth avenue and Beaubien street, there shall be constructed a loop line consisting of a single track from Fourteenth avenue in, along and upon Warren avenue to Beaubien street, and a single track from Fourteenth avenue in, along and upon Forest avenue to Beaubien street, connecting with the tracks heretofore authorized upon the said Fourteenth avenue and Beaubien street, and making a continuous line east and west with the lines heretofore authorized on Forest and Warren avenues.

Sec. 2. Said grantee shall complete the line hereby granted as a part of the railway lines authorized by the original ordinance, approved December 4, 1894, to which this is supplementary, in accordance with the provisions and subject to the conditions, rates of fare, and all provisions embraced in said original ordinance, approved December 4, 1894.

Sec. 3. The Common Council reserves the right to grant to other existing street railway companies the joint use of the tracks hereby authorized within one-half mile of the present City Hall, upon a reasonable compensation being paid to said grantee for the joint ownership of such tracks, poles, wires and appurtenances within said area, when declared necessary by the Common Council for the accommodation of the public, subject to the conditions and terms set forth in section 19 of the original ordinance, approved December 4, 1894.

*Provided*, that whenever the right shall have been obtained, for or by said grantees to the joint use of the tracks extending southerly from State street on Woodward avenue to the Detroit River, with convenient loop lines

enabling said grantees to reach the foot of Woodward avenue by its entire system of tracks and cars, any portion of the line hereby authorized on Shelby, Griswold, Bates streets and Jefferson avenue, thereby rendered unnecessary in consequence of such privilege, shall be removed by said grantees, and the streets from which such tracks are removed shall be restored to their former condition at the expense of said grantees.

And *provided further,* said grantees are hereby authorized to make such contract with the Fort Wayne & Belle Isle Railway Company as they shall deem expedient regarding the construction and maintenance of the tracks of said Fort Wayne & Belle Isle Railway Company upon Champlain street and Helen avenue, between Concord and Field avenues, and on Bates street, between Cadillac square and Farmer streets, and the tracks herein provided for upon Field and Jefferson avenues and heretofore granted on Concord avenue, and the running of cars thereon by said companies as a loop line, and said grantees are hereby authorized to construct such curves and connections with the tracks of the said Fort Wayne & Belle Isle Railway Company as may be necessary and convenient for the operation of said tracks by said companies as a loop line.

Sec. 4. Said grantees are hereby authorized to extend a switch from the tracks of the Detroit & Milwaukee Railway from Guoin or Atwater streets along Atwater or Riopelle streets connecting with the lot situate on the southwesterly corner of Riopelle and Atwater streets. Said switch to be used for the purpose of transporting freight from said railway to the power plant of said grantees.

Sec. 5. The powers, privileges and rights conferred and obligations imposed by this ordinance shall be deemed a contract and continue to said grantees, their associates, successors and assigns for the same period of thirty years as provided for in said original ordinance, approved December 4, 1894.

Sec. 6. This ordinance shall take effect when said grantees shall file with the City Clerk a wirtten acceptance thereof, and the bond and other obligations filed in connection with the original ordinance shall be held as further condition for the faithful performance of the terms of this ordinance.

## EXHIBIT.

### SUPPLEMENTARY ORDINANCE—ADDITIONAL RIGHT OF WAY

(Approved June 4, 1895.)

Section 1. Subject to all the provisions and requirements of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95, Howell's compilation of the statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, and the amendment and supplement thereto approved April 9, 1895, consent, permission and authority are hereby granted to said, The Detroit Railway, to construct, maintain, use and operate street railway tracks in, along and through the following streets and avenues in the City of Detroit, and the same to keep, maintain and use, and to operate railway cars thereon in the manner and subject to the conditions herein contained and to all the requirements and conditions set forth in the original ordinance, namely:

(a) A double track with necessary connections commencing at the intersection of Porter and Eighth streets; thence southerly in, along and upon Eighth street to Abbott street; thence easterly in, along and upon Abbott to Second street, connecting with the tracks heretofore authorized thereon. The tracks hereby authorized to be in lieu of the tracks heretofore authorized on Porter street, from Eighth street to Second street and on Second street from Porter to Abbott street.

*Provided*, That the Detroit Citizens' Railway Company, if it shall so elect, at the time The Detroit Railway begins the construction of tracks on the following described portion of Abbott street is hereby authorized to build and own the north track and one-half of the poles and wires to be built and erected in Abbott street from Eighth street to Second street; and both tracks and overhead construction shall be operated jointly by the two companies, without charge by either company to the other, on said portion of Abbott street. Failure on the part of the Detroit Citizens' Street

Railway Company to exercise this option within thirty days after the Detroit Railway completes its south track, shall operate as a forfeiture of its right to own and use any part of the tracks and overhead construction, in which case The Detroit Railway is to build and own all the tracks and overhead construction provided for in this section.

*Provided further,* that the adoption of this ordinance by the Common Council or the acceptance thereof by said grantees shall not operate or extend the franchise rights or affect the rights involved in any suit now pending between said grantees or the City of Detroit and The Detroit Citizens' Street Railway Company.

(b) A single track commencing at the intersection of State and Rowland streets; thence easterly in, along and upon State street, curving into Griswold street; thence a third track on the west side and in, along and upon Griswold street to Larned street; also from the intersection of Griswold and Michigan avenue, thence southeasterly a third track extending in, along and upon Michigan avenue, crossing Woodward avenue into Monroe avenue; thence a third track on the southeast side of Monroe avenue, extending in, along and upon said street to Farmer street, connecting with the tracks heretofore authorized on Farmer street, with the necessary connections into the tracks heretofore authorized upon Rowland, State, Griswold and Farmer streets.

(c) A double track extending from the intersection of Lafayette avenue and Sheby street, connecting with the tracks heretofore authorized thereon, running in, along and upon Lafayette avenue, crossing Griswold street, connecting with the single track hereby authorized on Michigan avenue.

(d) The single track loop on Griswold, Michigan and Monroe streets hereby authorized shall be, when constructed and put in operation in lieu of one of the tracks heretofore authorized on State and Gratiot streets between Griswold and Farmer streets and between State and Grand River avenue on Griswold.

Sec. 2. The powers, privileges and rights conferred and obligations imposed by this ordinance shall be deemed a contract and continue to said grantees, their associates, successors and assigns for the same period of thirty years as provided for in said original ordinance, approved December 4, 1894.

Sec. 3. This ordinance shall take effect when said grantees shall file with the City Clerk a written acceptance thereof and the bond and other obligations filed in connec-

tion with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance.

## EXHIBIT.

## SUPPLEMENTARY ORDINANCE.

Sec 1. Subject to all provisions and requirements of an ordinance entitled, "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95, Howell's compilation of the statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designed," approved December 4, 1894, and the amendments and supplements thereto, consent, permission and authority are hereby granted to said, The Detroit Railway, its successors and assigns, to construct, maintain, use and operate street railway tracks in, along and through the following streets and avenues in the City of Detroit, and the same to keep, maintain and use, and to operate railway cars thereon in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said original ordinance, namely:

(a) In lieu of the double track heretofore authorized on Porter, Eighth, Abbott, Second, Howard and Cass streets, between Twenty-fourth street and Lafayette avenue, a loop line shall be constructed commencing at the intersection of Twenty-fourth and Porter streets, connecting with the double track from the west on Porter street; thence by a single loop line track, one track extending easterly on Porter street to Second street; thence southerly on Second street to Lafayette avenue; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized thereon. The accompanying loop shall be constructed, commencing at the intersection of Porter and Twenty-fourth streets; thence southerly on Twenty-fourth street to Howard; thence easterly on Howard street to Twelfth street; thence northerly on Twelfth street to Abbott thence easterly on Abbott street to Fourth street; thence southerly on Fourth street to Lafayette; thence easterly on Lafayette avenue connecting with the double track heretofore authorized on Lafayette avenue, thereby forming a single track loop line in, along and upon said streets.

Provided, That the Detroit Citizens' Street Railway Company, if it shall so elect within ten days from the passage of this ordinance, it is hereby authorized to build and own a single track and the poles and wires to be built and erected in Abbott street, from Trumbull avenue to Michigan avenue; and the tracks and overhead construction on Abbott and Porter streets between Michigan and Trumbull avenues, shall be operated jointly by the two companies, without charge by either company to the other, on said portions of Abbott and Porter streets. Failure on the part of said company to exercise this option within ten days, and complete said tracks in sixty days, shall operate as a forfeiture of its right to own and use any part of the said tracks and overhead construction, in which case the other company may build and own all the tracks and overhead construction, on said portions of Porter and Abbott streets.

(b) In lieu of the double tracks heretofore authorized on Macomb and Hastings streets, extending from Brush street to Catherine and Sherman streets, a single track loop line shall be constructed, commencing at the intersection of Macomb and Brush streets, extending one track easterly on Macomb street to Russell street; thence northerly on Russell street to Catherine street, connecting with the track heretofore authorized thereon; and the other line commencing at Macomb and Brush streets; thence northerly on Brush street to Clinton street; thence easterly on Clinton street to Hastings street; thence northerly on Hastings street to Sherman street, connecting with the track heretofore authorized thereon, thereby forming a single track loop line in, along and upon the streets mentioned.

Sec. 2. The powers, privileges and rights conferred and obligations imposed by this ordinance shall be deemed a contract and continue to said grantees, their associates, successors and assigns, for the same period of thirty years as provided for in said original ordinance, approved December 4, 1894.

Sec. 3. This ordinance shall take effect when said grantees shall file with the City Clerk a written acceptance thereof, and the bond and other obligations filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance.

## EXHIBIT.

### SUPPLEMENTARY ORDINANCE.

(Approved October 8, 1895.)

Whereas, the Detroit Citizens' Street Railway Company and The Detroit Railway have entered into a contract whereby The Detroit Railway has acquired the right upon certain conditions and subject to certain limitations in said contract expressed, to run and operate its cars on the north track of the said Detroit Citizens' Street Railway Company on Michigan avenue, between Griswold and Porter street to Second street, and on the south track of said Detroit Citizens' Street Railway Company on Michigan avenue, between Griswold street and Abbott street, thence on Abbott street to Fourth street; and,

Whereas, It is agreed in said contract as follows, viz.: "This contract is not to become operative between the parties until an ordinance shall be adopted by the municipal authorities of the City of Detroit and approved and accepted by both companies consenting to the Detroit Company (meaning The Detroit Railway) running its cars under the terms of this contract in manner aforesaid, and the said municipal authorities shall agree with the said Detroit Company (meaning The Detroit Railway), that said company shall not construct its tracks on Lafayette avenue under its present ordinance until the Common Council shall declare that public necessity requires it, and shall further agree not to confer the right to construct a line or lines of street railway upon Lafayette avenue during the term of the present franchises of the Detroit Railway upon any other company."

Now, therefore, It is hereby ordained by the people of the City of Detroit

Section 1. Subject to the provisions and requirements as to rates of fare of an ordinance entitled, "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereafter designated," approved December 4th, 1894, and the ordinances amendatory thereof and supple-

mentary thereto, consent and authority is hereby given to the said, The Detroit Railway, its successors and assigns, to use the said tracks and electrical equipment of said Detroit Citizens' Street Railway Company on that portion of Michigan avenue, Porter street and Abbott street, above described, and operate its cars thereon pursuant to the terms of said contract. Also, to connect the Detroit Company's lines of street railway on Rowland street and Shelby street by means of suitable curves with said tracks on Michigan avenue; also, to put in the necessary crossings from the west side of Griswold street to connect with the third track heretofore authorized to be constructed by said The Detroit Railway upon Michigan avenue east of Griswold street; or, if The Detroit Railway shall so elect and the Detroit Citizens' Street Railway Company shall consent thereto, in lieu of putting in said crossings on Griswold street, it may operate its cars across Griswold street and thence easterly on Michigan avenue, across Woodward avenue and upon Monroe avenue, upon the tracks of the Detroit Citizens' Street Railway Company upon said streets.

Provided, however, that this ordinance shall not be deemed to be a revocation of the rights heretofore granted to The Detroit Railway, its successors and assigns, to construct, maintain and operate lines of street railway upon Lafayette avenue and Second street and Fourth street; but the said, The Detroit Railway, shall not be required to construct said lines on Lafayette avenue, and Fourth street and Second street until the Common Council shall by resolution declare that the public interest require it; and in the meantime and during the corporate existence of said The Detroit Railway, it is understood and agreed that the municipal authorities of the City of Detroit shall not grant permission and authority to any other street railway company to construct such lines on Lafayette avenue and Second street and Fourth street.

Sec. 2. The powers, privileges and rights conferred, and the obligations imposed by this ordinance shall be deemed a contract, and continue to said The Detroit Railway, its successors, associates and assigns, for the same period that said contract with the Detroit Citizens' Street Railway Company remains in force, to-wit: Thirty years from December 4, 1894; and neither of the parties to this agreement, during the term of the grant of The Detroit Railway, shall do anything to disturb the free use by the others in the operation of any lines of cars over said jointly used track.

Sec. 3. This ordinance shall not take effect unless within five days after the adoption thereof The Detroit Railway

shall file with the City Clerk a written acceptance thereof, and the Detroit Citizens' Street Railway Company within the same time shall file in writing with the City Clerk its acceptance and approval of this ordinance. The bonds and other obligations of The Detroit Railway filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance.

Sec. 4. This ordinance shall take immediatee effect.

## EXHIBIT.

### SUPLEMENTARY ORDINANCE

(Approved December 3, 1895.)

AN ORDINANCE supplementary to an ordinanceentitled, "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95 of Howell's compilation of the statutes of the state of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railwayz on certain streets, avenues and pubilc places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, extending the time in which to complete certain street railway lines heretofore authorized, and fixing and determining certain new street railway routes, connections and loop lines authorizing The Detroit Railway to establish, construct and operate street railways thereon.

It is hereby ordained by the people of the City of Detroit:

Section 1. Subject to all the provisions and requirements of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95, Howell's compilation of the statutes of the state of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, consent, permission and authority are hereby granted to said The Detroit Railway to construct, maintain, use and operate street railway tracks

in, along and through certain streets and avenues in the City of Detroit, and the same to keep, maintain, use and operate railway cars thereon, in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said original ordinance, namely:

(a) A double track in, along and through Dix avenue, from the line heretofore authorized on Livernois avenue, westerly to the westerly city limits, connecting with the tracks of said grantee in the township of Springwells.

Sec. 2. Said grantee shall complete the line hereby granted as a part of the railway lines authorized by the original ordinance, approved December 4, 1894, to which this is supplementary, in accordance with the provisions embraced in said original ordinance, on or before September 1, 1896.

Sec. 3. Owing to the inability of the City of Detroit to lay the concrete foundation in accordance with the provisions of Section 3 of the original ordinance, approved December 4. 1894, the present season, the time within which certain outlying lines heretofore granted shall be constructed, is hereby extended to September 1, 1896, namely:

The line heretofore authorized on Scotten avenue, north of Toledo avenue; on Buchanan street, from Scotten avenue to Livernois avenue and thence on Livernois avenue to Michigan avenue; on Milwaukee avenue between Fourteenth avenue and Twelfth street and thence northerly on Twelfth street to the city limits, and a single track loop, connecting therewith, commencing on Fourteenth avenue at Milwaukee avenue and extending on Fourteenth avenue to the city limits; the line on Beaubien street, running northerly from Piquette avenue to Hamlin avenue, thence easterly on Hamlin avenue to Oakland avenue, thence north on Oakland avenue to the city limits; and the line authorized on Mt. Elliott avenue, north of Forest avenue, thence on Harper avenue easterly to the city limits.

Sec. 4. In case the City of Detroit is unable or neglects to lay the concrete foundation and pavement provided for in paragraph 6 of Section 3 of the original ordinance, approved December 4, 1894, at the time said grantee desires to construct such tracks, said grantee is hereby authorized to construct its street railway tracks upon unpaved streets upon a temporary foundation of sand or other suitable material, and maintain the same until said highway shall be paved as provided by the charter of the City of Detroit, when the tracks thus laid shall be relaid by said grantee

upon such foundation as the street may be paved with, contemporaneously with the construction of said pavement, which foundation and pavement shall be laid at the expense of the city, as provided in said original ordinance, approved December 4, 1894.

Sec. 5. The track heretofore authorized on Twenty-fourth street, running from Howard street to the river, shall be abandoned by said grantee.

Sec. 6. The powers, privileges and rights conferred and the obligations imposed by this ordinance shall be deemed a contract and continue to said grantee, its successors and assigns, for the same period of thirty years, as provided for in said original ordinance, approved December 4, 1894.

Sec. 7. Said grantee having completed its system of railway, except the short outlying lines herein described, and the construction thereof having been prevented by injunction suits and the inability of the City of Detroit to lay the concrete foundations as provided in the original ordinance, the performance by said grantee of the conditions mentioned in the original ordinance, approved December 4, 1894, shall be deemed fulfilled and the certificate of deposit filed with the City Controller under said original ordinance shall be returned to said grantee, provided said grantee shall, within ten days from the date of the approval of this ordinance, deposit with the City Controller of the City of Detroit a bond in the sum of twenty-five thousand dollars ($25,000.00), to be approved by the Common Council, as security for the completion by said grantee, its associates, successors or assigns, of the outlying lines herein described within the time mentioned in this ordinance.

Sec. 8. This ordinance shall take effect when said grantee shall file with the City Clerk a written acceptance thereof.

## EXHIBIT.

### SUPPLEMENTARY ORDINANCE.

(Approved September 29, 1896.)

AN ORDINANCE supplementary to an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95, Howell's compilation of the statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, authorizing the maintenance of certain tracks in Concord avenue, between Champlain street and Jefferson avenue.

Section 1. Subject to all the provisions and requirements of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95, Howell's compilation of the statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, consent, permission and authority are hereby granted to said The Detroit Railway to maintain, use and operate the single street car track now constructed in, along and through Concord avenue, between Champlain street and Jefferson avenue; the said single track being now constructed so that the westerly rail of said track is laid two feet and five inches east of the center of said street; and said The Detroit Railway is hereby authorized to operate railway cars thereon in the manner and subject to the conditions set forth in said original ordinance; provided, however, that the said grantee shall, within thirty days from the date of the adoption of this ordinance, cause the pavement upon said Concord avenue, between Champlain street and Jefferson avenue, to be widened to the same width as the pavement in said street north of said Champlain street,

said work to be performed at the expense of said grantee and under the supervision of the Board of Public Works. The consent to maintain the said single track, granted to said grantee to construct a double track in the street named, nor any right the city may have to compel said railway company to lay said additional track whenever the Council may deem it necessary, as provided by said original ordinance.

Sec. 2. This ordinance shall take effect when said grantee shall file with the City Clerk a written acceptance thereof, provided said written acceptance is filed within five days from the final passage of this ordinance.

## EXHIBIT.

## CHANGE OF TRACK ON CLIFFORD STREET.

(Approved June 2, 1896.)

AN ORDINANCE to authorize The Detroit Railway to change the location of its tracks on Clifford street and Cass avenue, between the south line of the alley, situated next south of Sproat street and Bagg street.

*It is hereby ordained by the people of the City of Detroit:*

Section 1. The Detroit Railway is hereby authorized to change the location of its tracks on Clifford street and Cass avenue, between the intersection of the south line of the alley situated next south of Sproat street and the intersection of Cass avenue and Bagg street, and to construct the same on the line hereinafter described. The center line of the tracks upon which said Detroit Railway is hereby authorized to construct is described as follows: Commencing in the center of Clifford street at the intersection of the south line of said alley, running thence by reverse curve to a point on Cass avenue, which point is twenty-seven feet six and one-half inches westerly of a point on the east curb line of said avenue, measured at right angles to said curb line, said last mentioned point being one hundred and twenty feet north of the said south line of said alley, measured along said curb line, running thence northerly along Cass avenue parallel to said east curb line to the point where said center line intersects the center of Cass avenue, being the center between the curb

lines, running thence northerly along the center of Cass avenue to the intersection of a curve at the corner of Bagg street.

Sec. 2. This grant of rights and privileges is made subject to the limitations, restrictions and provisions of the several ordinances heretofore made and now operative in favor of the said Detroit Railway, except as herein otherwise provided.

Sec. 3. This ordinance shall not become operative until it is accepted in writing by the said Detroit Railway.

## EXHIBIT.

## ESTABLISHING ROUTES AND SERVICE THEREON

(Approved February 2, 1897.)

AN ORDINANCE fixing and establishing the different routes of the Detroit Railway, and to regulate the runing of cars upon said routes.

It is hereby ordained by the people of the City of Detroit:

Section 1. From and after the date of the approval of this ordinance, the lines of street cars now operated by the Detroit Railway, its successors and assigns, under an ordinance, approved December 4, 1894, and the ordinances amendatory thereof and supplemental thereto, shall be run for the accommodation of the public according to the following designated routes and upon the schedules hereinafter particularly fixed and established.

Sec. 2. The line now known and designated as the "Crosstown & Belle Isle Line" shall be operated as a continuous route from the corner of Warren avenue and Fourteenth avenue to the Belle Isle bridge, through the streets and avenues now traversed by said line, and shall be operated as a loop line through said streets, returning to said corner of Warren avenue and Fouteenth avenue, by Forest avenue, to the corner of Forest avenue and Fourteenth avenue and thence northerly upon Fourteenth avenue to the corner of Fourteenth avenue and Warren avenue, the place of beginning. Cars shall be run upon said route no further apart than eight minutes, except between the hours of 10 p. m. and 5 a. m.

That portion of said Crosstown and Belle Isle line extending from the western extremity of Warren avenue,

shall be operated as follows: The cars upon said line shall run from the western extremity of Warren avenue over the lines of said route to Fourteenth avenue, thence southerly on Fourteenth avenue to Forest avenue, and shall return over the same route from the intersection of Fourteenth avenue and Forest avenue, and shall run no further apart than eight minutes, except between the hours of 10 p. m. and 5 a. m. The cars upon said portion of said line shall be run so as to make connection, as near as may be, at the intersection of Forest avenue and Fourteenth avenue with the Belt line up Hastings.

Sec. 3. The line now known and designated as the "Springwells & Belle Isle Line" shall be run as a continuous route as at present operated, from the westerly city limits of said line to Belle Isle bridge. Cars shall be run upon said line no further apart than six minutes, except between the hours of 10 p. m. and 5 a. m.; provided, however, that between the hours of 6:15 a. m. and 8:15 a. m., and between the hours of 5 p. m. and 7 p. m., during week days, extra cars shall be run in such a manner as to make the schedule time during those hours four minutes between cars.

Sec. 4. The line now known and designated as the "Fourteenth Avenue and Hastings Street Line" shall be run as a continuous route. Between 5 o'clock a. m. and 10 p. m., except Sundays, cars on this line shall leave the corner of Beaubien street and Bethune avenue east, and the corner of Fourteenth avenue and Warren avenue west, at least every eight minutes; between 6:30 a. m. and 8 a. m., and between 5 p. m. and 6:15 p. m., except Sundays, cars shall leave the above mentioned points at least every four minutes. Every other car going north on Beaubien street shall run through to the city limits. Between 6:30 a. m. and 8 a. m., and between 5 p. m. and 6:15 p. m. every other car going north on Fourteenth avenue shall run to the corner of Warren avenue and Thirty-first street. (Approved January 9, 1900.)

Sec. 5. The line known and designated as the "Belt Line up Fourteenth Avenue" shall run as originally established and as now operated. The cars upon said line shall not be run further apart than eight minutes, alternating with the "Fourteenth and Hastings Line" so as to make a four-minute schedule upon Fourteenth avenue going north and upon Beaubien street going south. The cars upon said Belt Line shall run continuously each day except Sundays, between the hours of 5 a. m. and 8 p. m., and no cars shall be taken off said line before 8 p. m. The

cars upon said line shall also be run upon this schedule upon Sundays between the first day of May and the first day of October of each year.

Sec. 6. The line known as the "Belt Line up Hastings street," shall be run as originally established, and not as now operated, that is to say, upon the streets now traversed by said line and by the line known as the "Ferry Loop." The cars upon said line shall be run no further apart than eight minutes, alternating with the "Fourteenth Avenue and Hastings Street Line," so as to make a four-minute schedule upon Hastings street going north, and upon Fourteenth avenue going south. The cars upon said Belt Line shall run continuously each day, except Sundays, between the hours of 5 A. M. and 8 P. M., and no car shall be taken from said line until 8 P. M. The cars upon said line shall also be run upon this schedule time upon Sundays between the first day of May and the first day of October of each year. After 8 P. M. of each week day and also Sundays, the railway company shall be required to operate the line now known and operated as the "Ferry Loop," the cars upon which line shall run no further apart than twelve minutes, except between the hours of 10 P. M. and 5 A. M.

Sec. 7. The line known as the Mt. Elliott Avenue line, north of Forest avenue, shall be operated as a continuous route from the northerly terminus to Waterloo street.

Sec. 8. It shall be the duty of the company to have prepared and displayed in some conspicuous place in each car a card setting forth the schedule upon which the cars of the route upon which said cars are run, are operated, which card shall be in substantially the following words: The cars upon this route run every ..... minutes from ..... A. M. to ..... P. M., and every ..... minutes from ..... P. M. to ..... P. M, and when cars are run during the night the time of running shall also be stated upon said card

Sec. 9. Should the said company, its successors or assigns, fail within five days after the approval of this ordinance to comply with its terms and to put in force the schedules herein established, or should it at any time thereafter fail to operate its various lines according to the spirit and letter of this ordinance, such failure upon its part shall be deemed to be a misdemeanor, and the directors, officers, managers and superintendents of said road, or each or any one of them, shall be subject to prosecution in the Recorder's Court and a fine for each violation, not to exceed $500; and upon the imposition of any such fine and costs, the Court may make a further sentence that in default of payment thereof, such offender shall be im-

prisoned in the Detroit House of Correction for any length of time, not to exceed 60 days.

Sec 10. This ordinance shall take immediate effect.

## EXHIBIT.

(Approved February 17, 1900.)

*An Ordinance* to provide for the transfer of passengers from any route of the Detroit Railway to other routes of the same system.

It is hereby ordained by the people of the City of Detroit:

Section 1. On and after ten days from the final passage of this ordinance, the Detroit Railway, its successors or assigns, shall issue to all passengers requesting the same, a transfer ticket, or tickets, which will enable such passengers, on the payment of a single fare, to reach any point on the lines of said system by the shortest practicable route.

Sec. 2. Any person or corporation violating the provisions of this ordinance shall upon conviction thereof be punished by a fine not exceeding one hundred dollars, for the recovery of which, when imposed, proceedings may be had in any court of competent jurisdiction.

## EXHIBIT.

Supplementary Ordinance—Clay Avenue.

(Approved May 29, 1900.)

*An Ordinance* supplementary to an ordinance entitled "An ordinance granting to Green Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95, Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit," approved December 4, 1894, authorizing the maintenance of a single track railway with all necessary and convenient turnouts, sidetracks, switches, and connections in and along Clay avenue, from its intersection with Oakland avenue to the easterly city limits.

It is hereby ordained by the people of the City of Detroit:

Section 1. Subject to all the provisions and requirements of an ordinance entitled, "An ordinance granting to Green Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95, Howell's compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit," approved December 4, 1894, consent, permission and authority are hereby granted to the Detroit Electric Railway, the successor of the Detroit Railway, to maintain, use and operate a single street car track with all necessary and convenient turnouts, turntables, sidetracks, switches and connections, in and along Clay avenue, from its intersection with Oakland avenue to the easterly city limits.

*Provided,* however, that in event of the refusal of the Railroad Commissioner to allow said company to cross the tracks of the D., G. H. & M. R. R. Co., said grantees shall be allowed to terminate said line at the aforesaid railroad crossing on Clay avenue.

Sec. 2. The powers, privileges and rights conferred and obligations imposed by this ordinance shall be deemed a contract and continued to said grantee, its successors and assigns, for the same period of thirty years as provided for in said original ordinance, approved December 4, 1894.

Sec. 3. This ordinance shall take effect when said grantee, the Detroit Electric Railway, shall file with the City Clerk, a written acceptance thereof, and the bond and other obligations filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance. *Provided,* however, that said acceptance shall be filed within thirty (30) days from the date of the approval of this ordinance.

## EXHIBIT.

### SUPPLEMENTAL ORDINANCE—KERCHEVAL AVENUE.

(Approved August 7, 1900.)

AN ORDINANCE supplemental to an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95, Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, authorizing the maintenance of certain tracks on Kercheval avenue, from its tracks now existing on Concord avenue to the easterly city limits.

It is hereby ordained by the people of the City of Detroit:

Section 1. Subject to all provisions and requirements of an ordinance entitled "An Ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation, under Chapter 95, Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, consent, permission and authority are hereby granted to The Detroit Electric Railway, the successor of The Detroit Railway, to maintain, use and operate a double-track street car line in, along and through Kercheval avenue, from the tracks now laid in Concord avenue to the eastern city limits.

Sec. 1a. Said company is hereby required to run their cars on what is known as the Sherman street line through on the Kercheval avenue extension so that passengers using the Kercheval avenue line may have continuous

service through what is known as the Sherman street line to the westerly city limits.

Sec. 2. The powers, privileges, and rights conferred and obligations imposed by this ordinance shall be deemed a contract, and continue to said grantee, its successors and assigns for the same period of thirty years as provided for in said original ordinance, approved December 4, 1894.

Sec. 3. This ordinance shall take effect when said grantee, The Detroit Electric Railway, shall file with the City Clerk a written acceptance thereof, and the bond and other obligations filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance. *Provided,* however, that said acceptance shall be filed within fifteen days from the date of the approval of this ordinance, and provided further, that said extension shall be fully constructed and completed and cars thereon in regular operation on or before January 1, 1901.

## EXHIBIT.

### SUPPLEMENTAL ORDINANCE—KERCHEVAL AVENUE.

(Passed, notwithstanding the veto of the Mayor, May 7, 1901.)

AN ORDINANCE, supplemental to an ordinance entitled, "An ordinance granting to Green Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under Chapter 95, Howell's Compilation of the statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, authorizing the maintenance of certain tracks on Kercheval avenue, from its tracks now existing on Concord avenue to the easterly city limits:

It is hereby ordained by the People of the City of Detroit:

Section 1. Subject to all provisions and requirements of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation, under chapter 95, Howell's compilation of the statutes of the State of Michigan, said corporation to be named The Detroit Railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the City of Detroit, and on such other streets avenues and public places as may be hereinafter designated," approved December 4, 1894, consent, permission and authority are hereby granted to The Detroit Electric Railway, the successor of The Detroit Railway, to maintain, use and operate a double-track street car line in, along and through Kercheval avenue, from the tracks now laid in Concord avenue to the eastern city limits.

Sec. 2. Said company is hereby required to run their cars on what is known as the Sherman street line through on the Kercheval avenue extension service through what is known as the Sherman street line to the westerly city limits.

Sec. 3. The work of constructing said tracks shall be completed within 90 days after the acceptance of this ordinance by the company. The original construction, as respects rails, girdles and ties, from Baldwin avenue easterly to the city limits, may be the ordinary suburban construction, but within two years after the acceptance of this ordinance, said company shall reconstruct said tracks from Baldwin avenue easterly to the city limits in a manner and form as required by Section 3 of the ordinance to which this ordinance is supplementary. The construction westerly from Baldwin avenue to be as prescribed in the ordinance to which this is supplementary.

Sec. 4. The powers, privileges and rights conferred and the obligations imposed by this ordinance shall be deemed a contract and continue to said grantee, its successors and assigns, to the end of the term provided for in said original ordinance, approved December 4, 1894.

Sec. 5. This ordinance shall take effect when said grantee, The Detroit Electric Railway, shall file with the City Clerk a written acceptance thereof, and the bond and other obligations filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance. Provided, however, that said acceptance shall be filed within one month from the date of the approval of this ordinance.

I hereby certify that at a regular session of the Common Council, held on the 7th day of May, 1901, the foregoing ordinance was passed by the Common Council, notwithstanding the veto of his honor, the Mayor, by the following vote:

Yeas—Ald. Atkinson, Beamer, Freda, Hansjosten, Hillger, Houghton, Jerome, Joy, Keating, Koch, Lemke, Liphardt, McGuire, Magee, Marx, Miller, Reinhardt, Smith, Snow, Steiger, Weber, Weibel, Wildman and the President—24.

Nays—Ald. Campbell, Deimel, Koenig, Mohn, Tossy and Weiler—6.

JOHN A. SCHMID,
*City Clerk.*

Filed August 12, 1918.
ELMER W. VOORHEIS,
*Clerk.*

## RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA—EASTERN DISTRICT OF MICHIGAN—SS.:

I hereby certify and return that I served the annexed Bill of Complaint on the therein-named City of Detroit by handing to and leaving a copy thereof with Jacob Guthard, President of the Common Council and acting Mayor, personally at Detroit in said District on the twelfth day of August, A. D. 1918.

HENRY BEHRENDT,
*U. S. Marshal.*

By GEO. F. CALDWELL,
*Deputy.*

Filed August 13, 1918
ELMER W. VOORHEIS, *Clerk.*
By CARRIE DAVISON, *Deputy-Clerk.*

## CHANCERY SUBPOENA.

DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE SIXTH CIRCUIT AND EASTERN DISTRICT OF MICHIGAN, SITTING IN CHANCERY.

(Seal of Court)

The President of the United States of America, to City of Detroit, a Municipal Corporation, citizen of the State and resident of the Eastern District of Michigan:

You are hereby commanded to be and appear in the District Court of the United States of America for the Sixth Circuit and Eastern District of Michigan, sitting in Chancery, before the Judges thereof, at the District Court Room, in the City of Detroit within twenty days from the date hereof, then and there to answer unto a Bill of Complaint exhibited against you as defendant by Detroit United Railway, a Michigan Corporation, with its principal office in the City of Detroit, in said District, and the Southern Division thereof, as complainant, and this you shall in no wise omit under the penalty of one thousand dollars.

Witness, the Hon. Arthur J. Tuttle, United States District Judge for the Eastern District of Michigan, this twelfth day of August, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-third.

ELMER W. VOORHEIS,
*Clerk.*

*Memorandum.*—The above named defendant is required to file its answer or other defense in this suit with the Clerk of this Court, at his office in the City of Detroit on or before twenty days after service of this Writ of Sub-

pœna, excluding the day of service thereof, otherwise the Bill of Complaint may be taken *pro confesso* against said defendant.

ELMER W. VOORHEIS,
*Clerk.*

Filed August 13, 1918.
ELMER W. VOORHEIS, *Clerk.*
By CARRIE DAVISON, *Deputy-Clerk.*

EASTERN DISTRICT OF MICHIGAN,—ss.:

I hereby certify and return, that upon the twelfth day of August, A. D. 1918, I served the within Chancery subpœna on The City of Detroit, the within named, at Detroit, in said District, by delivering to Jacob Guthard, President of the Common Council and Acting Mayor, a true copy thereof, also exhibiting this writ with the seal of the court impressed thereon, said copy having a like Memorandum appended thereto as is hereto appended.

HENRY BEHRENDT,
*Marshal.*

By GEO. F. CALDWELL,
*Deputy.*

## MEMORANDUM OPINION.

THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

DETROIT UNITED RAILWAY,
a Michigan Corporation,
Plaintiff,
vs.
CITY OF DETROIT,
a Municipal Corporation,
Defendant.

This is a bill seeking an injunction restraining the City of Detroit from enforcing a certain ordinance which fixes the rate of fare to be charged by the plaintiff company for carrying passengers on certain of its street railway lines within said city. Plaintiff has also prayed for a preliminary injunction restraining the enforcement of such ordinance *pendente lite*. The bill also asks for a decree adjudging such ordinance to be null and void, as contrary to the United States Constitution.

It appears from the bill that the plaintiff is operating a street railway system in the City of Detroit, consisting of many different so-called lines; that on some of said lines it holds franchises granted to its predecessors in title by various villages and townships at a time when the territory covered by said so-called "franchise lines" was included in such villages and townships respectively and prior to the annexation of such territory to the City of Detroit, which took place after the granting of such franchises; that on other lines in plaintiff's street railway system in said city, the city claims that any franchises previously granted have expired although plaintiff has been permitted to continue the operation of its street cars thereon subject to conditions imposed by said city; that these so-called "non-franchise lines" and the "franchise lines"

previously mentioned are all continuous parts of one general system, in many cases one portion of the street containing its rails being in the franchise section of the city and another portion thereof being in a non-franchise section; that the Common Council of the City of Detroit has just enacted an ordinance prescribing the maximum rates of fare that may be charged by the plaintiff upon its so-called "non-franchise" lines within the city; and that the rates so prescribed are insufficient to enable the plaintiff, if operating under them, to receive a fair return upon its investment in its property used in operating its street cars in said city, for which reason said ordinance deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, and is therefore confiscatory and void.

It is also alleged that such ordinance impairs the obligations of the various contracts owned by said plaintiff in the form of the franchises already referred to, in that it attempts to prevent the plaintiff from charging the rates of fare allowed in such franchises, and that for that reason also it is contrary to the Federal Constitution and void.

A careful examination of the bill discloses no allegations to the effect that the plaintiff is compelled to operate its street cars on any of the so-called "non-franchise" lines within the City of Detroit. No claim is made that upon the expiration of the franchises previously received from the city any of such franchises were renewed or that the plaintiff has since that time received permission from the municipal authorities to operate its street cars on such lines on any terms or conditions inconsistent with those prescribed in the ordinance complained of. In short no contractual relation, either expressed or implied, between the plaintiff and the City of Detroit as to the so-called non-franchise lines is claimed to be in force and no reason appears from this bill why, if the plaintiff cannot profitably operate its street cars on those lines on the terms imposed by such ordinance, it should continue to do so. The case is thus clearly quite different in its facts from the case of the *City and County of Denver vs. Denver Union Water Co.*, 38 Sup. Ct. Rep. 278, recently decided by the United States Supreme Court and cited by plaintiff in its behalf. In that case a majority of the court were of the opinion that the conduct of the Water Company and of the municipality showed an understanding and an agreement between them to the effect that the Water Company was not only permitted but also required to continue to supply the public

with water after the expiration of the franchises in question and after the adoption of the ordinance complained of, which ordinance, in fact, the Court construed, in the light of the circumstances disclosed by the record, "as the granting of a new franchise." The Court refers in its opinion to various facts and to the provisions of the ordinance indicating such an understanding and agreement. Among such provisions it mentions the clause requiring the company to install a meter for any person desirous of using water by meter and it cites the section of the ordinance imposing fines upon the company and its agents for any violation of such ordinance. In that case, then, both parties to the suit, and the Court proceeded upon the assumption that the only question involved was the reasonableness of the rates complained of, and this was the question determined by the Court. The case is, of course, clearly distinguishable from the present case. Here the plaintiff makes no claim that it is under the duty, or that it possesses the right, to continue to operate its street cars upon what it refers to throughout its bill as the "non-franchise" lines in the city.

It has in fact been decided by the United States Supreme Court that with the expiration of the franchises formerly held by this plaintiff the right of the latter to occupy streets of the city with its tracks also expired.

*Detroit United Railway vs. City of Detroit*, 229 U. S. 39.

In declaring the status of the railway company, the Court, in the case just cited, used the following language:

> "Nor do we find more force in the claim of the implied contract to permit the railway to remain in the streets under such reasonable arrangements for public service as the situation might require. The right to grant the use of the streets was in the city. It had exercised it, had fixed with agreement with the railway the definite period at which such rights should end. At their expiration the rights thus definitely granted terminated by force of the terms of the instrument of grant. The railway took the several grants with knowledge of their duration, and has accepted and acted upon them with that fact clearly and distinctly evidenced by written contract. The rights of the parties were thus fixed and cannot be enlarged by implication. (Citing cases.)
>
> "We are of the opinion that where a street railroad is authorized to operate in the streets of a city

for a definite and fixed time, and has enjoyed the full term granted, it may, upon failure to renew the grant, be required, within a reasonable time, to remove its tracks and other property from the streets. In this case the Supreme Court of Michigan held that if the city, by the resolution of its Common Council should require the removal of the railway's property from the streets, the removal should be effected by the railway within ninety days after the notice of the resolution unless it be given a longer time or the time given be extended by like resolution. In thus providing for the removal of the property of the railway from the streets of the city, we are unable to see that any contractual obligation was impaired, or that the property of the railway was taken without due process of law, and these are the contentions as to the Federal questions argued in this connection."

No reason appears in this bill, and I can perceive of no legal reason, why the plaintiff could not, at the time of the enactment of the ordinance complained of, or cannot now, discontinue the operation of its street cars over the portions of its lines on which it does not claim to hold franchises. The ordinance clearly provides that its terms shall only apply to such lines. It is true that in Section 4 of the Ordinance it is provided that, "Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents"; but the ordinance must be read as a whole, and when so read, I am satisfied that it appears therefrom that it was not the intention of the city to attempt to interfere with any rights of the plaintiff under any of its franchises. Section 6 positively provides that, "The provisions of this ordinance shall not be construed as an attempt to impair the obligations of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city except where the same is governed by the provisions of such contract."

I think that the meaning of the language of Section 4 quoted is that where one trip on a line begins on franchise territory and ends on non-franchise territory, or vice versa, the total fare for such trip must not exceed the sum mentioned and that if the plaintiff charges that amount (the maximum under any of its franchises) for the portion of such trip lying within franchise territory, in such case it cannot charge any fare for the portion of the trip lying within the non-franchise territory. It is, of course, en-

tirely within the power of the City to prescribe such a condition for the privilege of using the non-franchise territory in carrying a passenger on such a trip, and the result is that the ordinance applies only to the non-franchise lines.

If then, the plaintiff is not required to operate its cars in return for the rates of fare thus prescribed by the ordinance, it certainly cannot properly be said that it is deprived of any of its property by reason of the ordinance in question. If it is not compelled to accept this rate of fare it is not concerned with the question of the adequacy of such fare. If plaintiff could not complain of the removal of its tracks from the streets covered by this ordinance or of the refusal of the city to permit it to receive any rate of fare on such streets, certainly it cannot legally complain that it is permitted to remain in such streets and receive a fare which it claims is inadequate. It seems, therefore, clear to me that plaintiff has not shown any deprivation of its property without due process of law, or any impairment of its contractual obligations as charged in the bill, and these being the only ground for relief alleged, I am of the opinion that the latter should be dismissed.

The conclusions thus reached, seem to me so plainly correct that I do not deem it necessary to wait for a motion to dismiss the bill, but am satisfied to order a dismissal on my own motion. I have no doubt that the court has power to enter such an order.

*Equity Rule 29;*
*McGuire vs. Pensacola City Company,* 105 Fed. 677;
*O'Connell vs. Mason,* 132 Fed. 245;
*Jackson Co. vs. Gardiner Instrument Co.,* 250 Fed. 113;
*Fourgeres et al. vs. Jones et al.,* 66 Fed. 316.

For the reason stated a decree may be entered dismissing the bill for want of equity, and it necessarily follows that the motion *ore tenus* for a preliminary injunction, based as it is upon the same grounds as those alleged in the bill, must be denied.

(Signed) ARTHUR J. TUTTLE,
*District Judge.*

Detroit, Michigan,
August 13, 1918.

Filed August 13, 1918.
ELMER W. VOORHEIS, *Clerk.*

## DECREE DISMISSING BILL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

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|---|---|
| DETROIT UNITED RAILWAY, a Michigan Corporation, Plaintiff, vs. CITY OF DETROIT, a Municipal Corporation, Defendant. | No. 270. |

At a session of said Court continued and held at the District Court Room of the United States for the Eastern District of Michigan, Southern Division, in the Federal Building in the City of Detroit, State of Michigan, within said District, on Tuesday, August 13, 1918,

Present, Honorable Arthur J. Tuttle, District Judge.

An application for a restraining order or temporary injunction to be issued in accordance with the prayer of the Bill of Complaint filed herein having come on to be heard before said Court, on motion made ore tenus, in open Court, Bernard F. Weadock and William L. Carpenter, J. C. Donnelly, P. J. M. Hally and Elliott G. Stevenson appearing on behalf of the plaintiff and Allan H. Frazer, Corporation Counsel of the City of Detroit, and Richard I. Lawson, of counsel, appearing on behalf of the defendant,

The said motion was argued on behalf of the plaintiff and the Court, upon consideration of the same, without further argument denied the motion of the plaintiff for a restraining order or temporary injunction and ordered the dismissal of the plaintiff's Bill of Complaint.

It was thereupon ordered, adjudged and decreed by said Court that said motion for a temporary restraining order and injunction be denied and that the plaintiff's Bill of Complaint be and the same is hereby dismissed.

ARTHUR J. TUTTLE,
*District Judge.*

## CITATION.

UNITED STATES OF AMERICA, ss.

TO THE CITY OF DETROIT, a Municipal Corporation, Greeting:

You are hereby Cited and Admonished to be and appear at the Supreme Court of the United States at Washington, within thirty (30) days from the date hereof, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Eastern District of Michigan, Southern Division, In Equity, wherein the Detroit United Railway, a Michigan corporation, is appellant (or plaintiff in error) and you are appellee (or defendant in error), to show cause, if any there be, why the decree rendered against the said appellant (plaintiff in error) as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur J. Tuttle, Judge of the District Court of the United States for the Eastern District of Michigan, this thirteenth day of August, in the year of our Lord one thousand nine hundred and eighteen.

ARTHUR J. TUTTLE,
*District Judge of the United States for the Eastern District of Michigan.*

Filed August 13, 1918.
ELMER W. VOORHEIS, *Clerk.*

## RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA—EASTERN DISTRICT OF MICHIGAN—ss.:

I hereby certify and return that I served the annexed Citation on the therein-named City of Detroit by handing to and leaving a true and correct copy thereof with Allen H. Fraser, Corporation Council personally at Detroit in said District on the fourteenth day of August, A. D. 1918.

HENRY BEHRENDT,
*U. S. Marshall.*

By GEO. F. CALDWELL,
*Deputy.*

Filed August 14, 1918
ELMER W. VOORHEIS, *Clerk.*
By CARRIE DAVISON, *Deputy Clerk.*

## RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA—EASTERN DISTRICT OF MICHIGAN—ss.:

I hereby certify and return that I served the annexed Citation on the therein-named City of Detroit by handing to and leaving a true and correct copy thereof with Richard Lindsay, City Clerk personally at Detroit in said District on the fourteenth day of August, A. D. 1918.

HENRY BEHRENDT,
*U. S. Marshall.*

By GEO. F. CALDWELL,
*Deputy.*

Filed August 15, 1918
ELMER W. VOORHEIS, *Clerk.*
By CARRIE DAVISON, *Deputy Clerk.*

## CLAIM OF APPEAL AND ALLOWANCE.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

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| **DETROIT UNITED RAILWAY, a Michigan Corporation, Plaintiff, vs. CITY OF DETROIT, a Municipal Corporation, Defendant.** | **No. 270.** |

Plaintiff in the above entitled cause, conceiving itself aggrieved by the final decree entered on the 13th day of August, A. D., 1918, in the above entitled cause, does hereby appeal from said decree to the Supreme Court of the United States and it prays that this, its appeal, may be allowed and that the transcript of the record, together with the assignments of error and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 13th day of August, in the year of our Lord nineteen hundred and eighteen.

BERNARD F. WEADOCK,
*Attorney for Plaintiff and Appellant.*
STEVENSON, CARPENTER, BUTZEL & BACKUS,
DONNELLY, HALLY, LYSTER & MUNRO,
*Of Counsel.*

And now, to-wit, on this thirtenth day of August, in the year of our Lord nineten eighteen.

It is Ordered that the appeal in the above entitled cause be allowed as prayed for.

ARTHUR J. TUTTLE,
*District Judge.*

Filed August 13, 1918.
ELMER W. VOORHEIS, *Clerk.*

## ASSIGNMENTS OF ERROR.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

| | |
|---|---|
| DETROIT UNITED RAILWAY, a Michigan Corporation, Plaintiff, vs. CITY OF DETROIT, a Municipal Corporation, Defendant. | No. 270. |

And now comes the above named plaintiff, by Bernard F. Weadock, its attorney and says that the district judge who rendered the final decree in the above entitled cause erred in the following particulars, to-wit:

I.

Said district judge erred in holding that the enforcement of the ordinance adopted by the Common Council of the City of Detroit, August 9, 1918, of which Exhibit "X" attached to the plaintiff's bill of complaint is a copy, did not and does not impair the obligation of the contract rights of the plaintiff under the franchise and grants to the plaintiff and its assignors, and especially the contract and franchise rights granted under the grants and franchises referred to in paragraphs (12) and (14), being Exhibits "D" and "G" attached to the plaintiff's bill of complaint in contravention of Sec. 10, Article 1 of the Constitution of the United States.

II.

Said District Judge erred in holding that the said ordinance adopted by the Common Council of the City of Detroit, August 9, 1918, of which Exhibit "X" attached to the plaintiff's bill of complaint is a copy, did not, under the allegations of said bill of complaint, amount to taking the plaintiff's property without due process of law as alleged in said bill of complaint, in contravention of the provisions of the 14th Amendment of the Constitution of the United States.

III.

The said District Judge erred in holding that the plaintiff, under the allegations in said bill of complaint, was not entitled to an injunction restraining the enforcement of said ordinance adopted by the Common Council of the City of Detroit on August 9, 1918, of which Exhibit "X" attached to the plaintiff's bill of complaint is a copy.

IV.

The said District Judge erred in dismissing the plaintiff's bill of complaint filed herein.

BERNARD F. WEADOCK,
*Attorney for Plaintiff.*

STEVENSON, CARPENTER, BUTZEL & BACKUS,
DONNELLY, HALLY, LYSTER & MUNRO,
*Of Counsel.*

Filed August 13, 1918.
ELMER W. VOORHEIS, *Clerk.*

## BOND ON APPEAL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

DETROIT UNITED RAILWAY,
a Michigan Corporation,
Plaintiff,
vs.
CITY OF DETROIT,
a Municipal Corporation,
Defendant.
No. 270.

Know all men by these presents, that we, the Detroit United Railway, a corporation, as principal, and John C. Donnelly and Elliott G. Stevenson, of Detroit, as sureties, are held and firmly bound unto the City of Detroit, a municipal corporation, in the penal sum of two hundred and fifty dollars ($250) lawful money of the United States, to be paid to the said City of Detroit, corporation, and for the payment of which we bind ourselves and each of us, and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this thirteenth day of August, A. D. nineteen hundred and eighteen.

Whereas, the above named, Detroit United Railway, has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled cause by the Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division.

Now therefore, the condition of this obligation is such that if the above bounden the Detroit United Railway shall prosecute said appeal to effect and answer for all damages and costs that may be adjudged against it if it fails to make said appeal good and effective, then this obligation shall be void, otherwise to be and remain in full force and effect.

DETROIT UNITED RAILWAY,
By FRANK W. BROOKS,
*President.*
JOHN C. DONNELLY. (L. S.)
ELLIOTT G. STEVENSON. (L. S.)

And now, to-wit, on this thirteenth day of August, A. D. nineteen hundred and eighteen, it is ordered that the form and penalty of the foregoing bond be and the same is hereby approved.

ARTHUR J. TUTTLE,
*District Judge.*

Filed August 13, 1918.
ELMER W. VOORHEIS, *Clerk.*

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan, Southern Division.

In Equity. No. 270.

DETROIT UNITED RAILWAY, a Michigan Corporation, Plaintiff,

vs.

CITY OF DETROIT, a Municipal Corporation, Defendant.

EASTERN DISTRICT OF MICHIGAN,
*Southern Division, ss:*

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify and return to the claim of appeal of the above named Plaintiff in the above entitled cause; that the foregoing is a true copy of all the records and proceedings in said cause; that I have compared the same with the originals on file and of record in my office, and that the same is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Detroit, in said District, this ninth day of September, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELMER W. VOORHEIS,
*Clerk, United States District Court,*
*Eastern District of Michigan.*

Endorsed on cover: File No. 26,752. E. Michigan, D. C. U. S. Term No. 666. Detroit United Railway, Appellant, vs. City of Detroit. Filed September 19, 1918. File No. 26,752.

## PETITION

United States of America

In the Supreme Court of the United States

DETROIT UNITED RAILWAY,
a Corporation,
Plaintiff and Appellant,
vs.
THE CITY OF DETROIT,
a Municipal Corporation,
Defendant and Appellee.

To the said SUPREME COURT OF THE UNITED STATES and HONORABLE WILLIAM R. DAY, one of the Associate Justices thereof:

The petition of the Detroit United Railway respectfully represents and shows:

1. That on the twelfth day of August, A. D. 1918, it filed its bill of complaint in the above entitled cause in the District Court of the United States for the Eastern District of Michigan, Southern Division, and upon the filing thereof a subpoena requiring the defendant and appellee above named to appear and answer the said bill of complaint was issued, which subpoena, together with a copy of the plaintiff's bill of complaint so filed, was, on said twelfth day of August, A. D. 1918, duly served upon the defendant and appellee by the United States Marshal of said District.

2. That said bill of complaint prayed, for reasons set forth therein, that an injunction be issued thereon, enjoining and

## ANSWER

United States of America

In the Supreme Court of the United States

DETROIT UNITED RAILWAY,
a Corporation,
Plaintiff and Appellant,
vs.
THE CITY OF DETROIT,
a Municipal Corporation,
Defendant and Appellee.

The above named defendant, the City of Detroit, in obedience to the order of the Honorable William R. Day, one of the Justices of the Supreme Court of the United States, made on the 17th day of August, 1918, in said cause, and in answer to the petition of the above named plaintiff, Detroit United Railway, filed herein, comes now and answers said petition as follows:

1. Defendant admits the allegations in the first paragraph of said petition as therein alleged.

2. Defendant admits the allegations in the second paragraph of said petition as therein alleged.

restraining the defendant and appellee from enforcing or attempting to enforce the provisions of an ordinance theretofore adopted by the Common Council of the City of Detroit (the same being Exhibit "X" attached to said bill of complaint), and for general relief, and upon said bill of complaint applied to said Court for a temporary injunction in accordance with the prayer of such bill.

3. That Honorable Arthur J. Tuttle, the Judge of said District Court, directed that the hearing of the application of plaintiff for such injunction be fixed for August 13, 1918, at nine o'clock A. M., at the District Court Room in the Federal Building in the City of Detroit, and caused notice to be given to the City Counsellor for the City of Detroit to appear at such time for such hearing.

3. Defendant admits the allegations in the third paragraph of said petition as therein alleged.

4. That at the time fixed, the plaintiff herein appeared by its counsel, and the defendant by Mr. Allen H. Frazer, City Counsellor of said City of Detroit, and Mr. Richard I. Lawson, Counsel for said defendant.

4. Defendant admits the allegations in the fourth paragraph of said petition as therein alleged.

5. That upon such hearing the Judge of said District Court, to wit: the said Honorable Arthur J. Tuttle, considered said bill of complaint, heard the argument on behalf of the plaintiff in support of the application made for such injunction, and, without hearing any argument from counsel for the defendant, orally announced that he would deny the plaintiff's application for an injunction and would dismiss the plaintiff's bill of complaint without further proceedings.

5. Defendant admits the allegations in the fifth paragraph of said petition as therein alleged, but further avers that said District Judge filed in said case a written opinion, copy of which is hereto attached and marked Exhibit 1.

6. That on said thirteenth day of August a decree was entered by said Court denying petitioner's application for injunction and dismissing its bill of complaint filed in said United States District Court as aforesaid. That forthwith the plaintiff filed a claim for an appeal from said decree to the Supreme Court of the United States and such appeal was, on said thirteenth day of August, duly allowed by said District Judge and a bond

6. Defendant admits the allegations in the sixth paragraph of said petition as therein alleged.

upon appeal was duly executed by the petitioner, with sufficient sureties, which bond was approved as to form and penalty by said District Judge. That on said thirteenth day of August the petitioner duly filed in said Court its assignments of error and said Court granted a citation requiring the defendant to appear in this Court on said appeal within thirty days from the date thereof, and said citation has been duly served upon said defendant.

7. That accompanying this petition is a certified copy of the proceedings upon said appeal, including the decree of the Court, the claim of appeal on behalf of petitioner, the allowance of such appeal by the District Judge, the bond filed upon appeal, the assignments of error filed in said cause and the citation issued therein and served as above stated.

8. That petitioner is advised by counsel that the action of said District Judge in refusing to grant the injunction prayed for in its bill of complaint filed in said District Court and in decreeing the dismissal of such bill of complaint was erroneous and that instead of such action said District Judge should have granted such injunction, retained jurisdiction of said cause and proceeded with the orderly hearing of the same.

9. That it is also advised by counsel and believes and therefore states that the ordinance referred to in plaintiff's bill of complaint (being Exhibit "X" attached thereto) was void for the reasons stated in said bill of complaint, to wit: that it impaired the obligation of the plaintiff's contracts, to wit: franchises, set forth in said bill of complaint, in violation of the provisions of Section 10 of Article I of the Federal Constitution, and that the rates of fare fixed in and by the terms of said ordinance, Exhibit "X",

7. Defendant admits the allegations in the seventh paragraph of said petition as therein alleged.

8. In answer to the eighth paragraph of said petition, this defendant admits that the petitioner may have been advised by its counsel that the action of the District Judge in refusing to grant the injunction prayed for in its bill of complaint filed in said cause in the District Court and decreeing the dismissal of the bill of complaint was erroneous; but this defendant alleges that it is advised by its counsel that the action taken by the District Judge in dismissing the bill of complaint and denying an injunction was legal and was in fact the only proper disposition that could be made judicially of said bill and the application for an injunction.

9. This defendant admits that plaintiff may have been advised by its counsel that the ordinance (Exhibit "X") attached to the bill of complaint, is void for the reasons stated in the bill of complaint filed herein; but this defendant alleges and avers that said ordinance was a proper and legal exercise of the legislative powers and functions of the legislative body of the City of Detroit; that it was wholly within its power to fix the rate of fare on street railway lines where franchises had expired and that in so

were insufficient to provide for the operating expenses of petitioner's railway system within said City of Detroit and a reasonable return upon the value of petitioner's property employed in rendering the service petitioner was necessarily rendering to the people of the City of Detroit in affording transportation facilities within said city, and in so doing was taking petitioner's property without due process of law, in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States.

doing said legislative body by the passage of said ordinance did not violate the provisions of section 10 of article 1 of the federal constitution, nor did said legislative body of said city violate, in the passage of said ordinance, any other provision of the federal constitution; nor does said ordinance take the property of the plaintiff without due process of law. This defendant avers that the revenues received under said ordinance by the plaintiff are sufficient to pay and do pay a reasonable return upon the actual value of petitioner's property employed in the transportation service in said city, and that if such fares are insufficient for the purpose of the railway, then there is no obligation on the part of plaintiff to continue the operation of its cars.

10. That the claim in behalf of the City of Detroit relating to the expiration of petitioner's franchises in said city, so far as it is claimed they have expired, has existed since 1909—nearly ten years—and during all that period the City of Detroit, through its Common Council and Board of Public Works and other officials, acting in pursuance of the provisions of the Charter of the City of Detroit, has many times during each year that has elapsed since the year 1909 required petitioner to regulate the operation of its cars over such non-franchise lines, to make large expenditures in bettering, improving and extending its lines of railway and to expend large sums of money for additional equipment to supply the needs of the public of the City of Detroit for transportation purposes in said city, such expenditures so made since the claimed expiration of said franchises in 1909 amounting in the aggregate to several million dollars, as shown by affidavits attached hereto in support of the allegations of this petition.

10. This defendant admits that it claims a large percentage of the franchises of the plaintiff expired in the year 1909, but it emphatically denies that it or its common council or its board of public works or any of its city officials, acting in pursuance of the provisions of the charter of the City of Detroit, has at any time since 1909 done anything which in any way gave the plaintiff any rights in the streets where franchises expired on said last mentioned date; that, wherever improvements and extensions were made they were so made with the understanding that the plaintiff thereby gained no rights in the streets of the City of Detroit; that such improvements and extensions wherever they were made were made for the purpose of improving and preserving the value of the plaintiff's railway system inside and outside the City of Detroit and were not made because of some duty which the plaintiff claimed it owed to the city and the public. And the defendant avers that, under the constitution and laws of the State of Michigan and charter of the City of Detroit, no rights can be granted said railway or any other railway or public service corporation without an affirmative referendum, except rights which may be terminated upon a day's notice by the authorities of said city.

11. That, as shown by petitioner's bill of complaint filed in said cause, there are being operated within the territorial limits of the City of Detroit, great factories employing thousands of men who have no other means of transportation to and from their homes than the facilities provided by petitioner's street railway system within the City of Detroit, and that the operation of such system over such non-franchise lines is absolutely essential to provide for the needs of the people of the City of Detroit, and it was because of such needs of the people of the City of Detroit that its Common Council have from month to month and year to year since 1909 made requirements that caused petitioner to make vast investments in reconstruction of tracks on such so-called non-franchise lines, additions to equipment, terminal facilities and other facilities absolutely essential to the operation of said lines not only over the franchise portion thereof but the non-franchise portion thereof.

11. This defendant admits that there are within the limits of the City of Detroit great factories employing thousands of men and that those men are transported to and from their homes on lines of railway operated by the plaintiff herein; but it denies, as in paragraph eleven alleged, that the operation of such railways is absolutely essential to provide for the needs of the people of the City of Detroit, and avers that in times past when strikes have taken place upon said railway the people of the City of Detroit found other means for passenger transportation and conveyance, and that the City of Detroit has not surrendered, neither has it granted or surrendered, any of its rights to the streets and the control thereof; that because the operation of said railway system over said non-franchised lines and the carrying of passengers thereon is convenience, affords no reason for the plaintiff to fix arbitrarily and independently excessive rates of fare for passenger transportation upon such lines of railway; that in the city resides the power under the law to fix the reasonable rates for transportation of freight and passengers over the lines therein; that anything which has been done, any grants which have been made or investments in said railway since 1909 by the plaintiff, were so done for the benefit and advantage of the plaintiff alone in the preservation of its property; that wherever and whenever in the City of Detroit improvements were made by said railway company upon its property, such improvements were so made with the distinct understanding that thereby the plaintiff gained no term rights or additional rights in the streets; that the tracks and railway equipment of the plaintiff might be ordered from the streets by the defendant at its pleasure or caprice; that the terminal facilities mentioned in paragraph eleven of plaintiff's petition are essential to the operation of the outside or interurban railway lines of the plaintiff which enter said city and upon which are carried passengers and freight from nearly all parts of the lower

peninsula of Michigan and as far south as the State of Ohio, for which terminal facilities the plaintiff prays the City of Detroit nothing although such terminal facilities are of great value to the plaintiff and are worth for no other purpose to it millions of dollars; that its interurban lines of railway enter the city over these non-franchised lines which run direct to the heart of said city and that such terminal facilities are absolutely necessary to the preservation of the interurban property of the plaintiff; that plaintiff's interurban cars operate over Fort Street from the city and as far south as the City of Toledo, Ohio; that the plaintiff's interurban cars operate upon Michigan avenue and as far west as Jackson and Kalamazoo; that the plaintiff's interurban cars operate over Grand River avenue as far northwest as Pontiac; that the plaintiff's interurban cars operate over Woodward avenue as far northwest as Saginaw and Bay City; that the plaintiff's interurban cars operate over Gratiot avenue as far north as Port Huron; that the plaintiff's interurban cars operate over Jefferson avenue as far north as Mt. Clemens; upon all of which avenues within said city the plaintiff has no franchise rights except near the extreme limits of the city and there only for short distances; that the terminal of all those interurban railways is in the center of the city upon the non-franchised lines of said railway.

12. That at the time of the enactment of the ordinance referred to, petitioner was engaged in the extension of its lines so as to meet the requirements of the Ford Motor Company in its construction for the United States Government of the so-called Eagle Submarine Chasers, which work was expressly authorized by the Common Council of the City of Detroit and was required by the needs of said Company, where thousands of men are employed, and the construction and use of such extension to serve the said Ford Motor Company plant would be valueless except for use in connection with the said so-called non-franchise lines. Many other

12. This defendant admits that at the time of the passage of the ordinance herein referred to, the plaintiff was engaged in the construction of an extension of its lines to the works of the Ford Motor Company situated at or near the River Rouge, and that such extension and work were expressly authorized by the common council of the City of Detroit by resolution, a copy of which, or so much thereof as will show the terms under which said extension was or is to be made, reads as follows:

"And be it further resolved, that it is further understood that said railway company by its acceptance hereof gains no

extensions of lines have been made in recent years involving the expenditure of very large sums of money, as shown by affidavits accompanying this petition.

13. That at the time that petitioner filed its bill of complaint in said District Court of the United States, to wit: on August 12, 1918, and caused said subpoena, with a copy of said bill of complaint, to be served on the defendant, as above herein stated, the said United States District Court for the Eastern District of Michigan, Southern Division, acquired jurisdiction over the subject-matter involved in said suit—among other

term rights in said Avenue and Road by reason of installing the equipment hereby permitted, and that the common council or the people of the City of Detroit at their pleasure or caprice may revoke the permit hereby granted, and said company will forthwith remove from said Avenue and Road the property permitted to be placed therein by it under this grant.

"It is further understood and agreed between said City of Detroit and the said railway company that the making of this grant and the acceptance thereof by said company shall not be deemed to be a waiver of any of the rights of the said City of Detroit with reference to the construction, maintenance and operation of any lines of railway or street railway tracks now owned, maintained and operated in said city and that each party hereto saves and reserves all of its rights, whatever they may be, the same as though this grant had not been made or accepted."

The said resolution was passed by the common council at its meeting held May 10, 1918 (See Common Council Journal 1910, pp. 593, 594).

This defendant further shows in connection therewith that every extension and every improvement and every betterment which has been made by said plaintiff upon its railway were made upon terms similar to those just above recited, and in or at no instance, since 1909, has the City of Detroit surrendered or granted any rights, which it possessed over the streets, to the plaintiff by any action it has taken with reference to permits of the character above stated.

13. This defendant denies, as in paragraph thirteen alleged, that the District Court of the United States had exclusive jurisdiction of the subject matter of this litigation and of the parties herein at the time suit was begun in the State Court, and avers that the Circuit Court for the County of Wayne, in Chancery, State of Michigan, granted an injunction against the plaintiff herein from collecting (as in the plaintiff's petition alleged) any rate

things the determination of the validity or invalidity of said ordinance, Exhibit "X", referred to—and had exclusive jurisdiction to determine the questions relating thereto. That, notwithstanding such fact, the defendant herein claiming that said ordinance, Exhibit "X", had become effective at midnight of August 12, 1918, immediately thereafter, to wit: between twelve and one o'clock of the morning of August 13, filed a bill of complaint in the Circuit Court for the County of Wayne, In Chancery, for the purpose of having determined the same questions involved in the suit so commenced and then pending in the District Court of the United States for the Eastern District of Michigan, to wit: the validity of said ordinance, Exhibit "X", and thereupon, at or about the hour of one o'clock in the morning of August 13, 1918, Honorable Harry J. Dingeman, one of the Circuit Judges of said Circuit Court for the County of Wayne, In Chancery, granted an injunction restraining petitioner from enforcing or collecting any fares over its lines of railway within the City of Detroit, except the fares specified in said ordinance Exhibit "X".

14. That said United States District Court having so acquired jurisdiction of the subject-matter involved in both of said suits before the commencement of the suit of the City against petitioner in said Circuit Court for the County of Wayne, In Chancery, said defendant had no right to commence such suit in the Circuit Court for the County of Wayne, In Chancery, and the commencement of such suit and the granting of an injunction therein as aforesaid was a violation of the rights of petitioner.

of fare above that fixed in the ordinance, Exhibit "X." It admits that the injunction was issued on the morning of August 13, 1918, at its instance and request and upon a bill filed by said city in said Circuit Court, that being the time when said ordinance became effective, and that thereby the Circuit Court for the County of Wayne, in Chancery, obtained jurisdiction to try and determine any and all questions which might be raised in connection with any litigation affecting the validity of said ordinance or any of the provisions thereof; and that the application here made by the plaintiff for an injunction should be denied for the reason that no federal question is involved and because it is a suit between two citizens of the same State affecting the construction of municipal law and State statutes; that the proper forum or tribunal in which to litigate their differences had already acquired jurisdiction before the hearing of the application in the District Court for an injunction, and defendant avers that this Court has no jurisdiction of the matter as the State Court first assumed control thereof.

14. This defendant denies that the District Court of the United States acquired jurisdiction of the subject matter involved in this suit before the commencement of the suit by the city in the Wayne Circuit Court, in Chancery, as in the fourteenth paragraph of said petition alleged. It denies that the defendant had no right to commence such suit in the Wayne Circuit Court. It denies that the commencement of said suit in the Wayne Circuit Court was in violation of the rights of the petitioner, and avers in that behalf that the commencement of said suit in said Wayne Circuit Court, in Chancery, was proper and legal, and that the rights of the petitioner can be as well preserved and protected in that court as in any other in the land; and that if it can be shown in said court that the plaintiff has contracts, the rights of which by the decision of such courts are impaired, an

15. That by reason of the increased cost imposed upon petitioner in connection with the operation of its street railway system in the City of Detroit, owing to conditions growing out of the War and especially the award of the United States War Labor Board made on August 1, 1918, increasing the rate of compensation for petitioner's employees, petitioner was compelled to increase the rates of fare that had theretofore been in effect over its systems of street railways within the City of Detroit, with a view to covering such additional burdens placed upon it, and the said City of Detroit having refused to take any action consenting to the increase of rates of fare to be charged by petitioner owing to such increased burdens imposed upon it—although the matter was directly brought to its attention —the petitioner was compelled to and did on August 7, 1918, establish new and increased rates of fare to become effective on the morning of August 8, 1918, such rates of fare being a cash fare of six cents or ten tickets for fifty-five cents, with universal transfers over its entire system, embracing, as shown in its bill of complaint referred to, over two hundred and seventy miles of track. That such new rates of fare were in all respects reasonable and did not provide even sufficient revenue to cover cost of operation, reasonable depreciation and a reasonable return upon the value of the petitioner's property necessarily employed in serving the public within the City of Detroit.

appeal will lie directly from said court to the Supreme Court of the State of Michigan, thence to the United States Supreme Court where such decision may be reviewed and any error committed by such State courts corrected.

15. This defendant denies, as in paragraph fifteen alleged, that by reason of the increased cost imposed upon the plaintiff in connection with the operation of its street railway system in the City of Detroit, owing to the conditions growing out of the war and especially the award of the United States War Labor Board made August 1, 1918, increasing the rate of compensation for petitioner's employes, petitioner was compelled to increase rates of fare that had theretofore been in effect over its system of street railways within said city; denies the right of power of the plaintiff to independently and without agreement with said city or court determination to fix the rates of fare which should prevail upon said lines of railway; and this defendant emphatically challenges the power of the plaintiff herein to arbitrariy fix fares and increase the rates of transportation over its lines of railway within the City of Detroit where franchises have expired; and avers that the action of the plaintiff in thus increasing rates was arbitrary, unjust and improper; that the action of the plaintiff in arbitrarily fixing the fare at six cents per passenger, or ten tickets for fifty-five cents, on the non-franchised lines while at the same time carrying passengers upon its franchised lines for eight tickets for a quarter most of the day, was outrageous; that the conduct of the plaintiff in discriminating against its passengers and against the citizens of the City of Detroit, car riders, was reprehensible and could only lead, as it did lead, to disorders and riots; that the said rate of fare fixed by said plaintiff above anything that had ever been heard of or exacted in the City of Detroit applied only to the non-franchised lines, and that the franchised lines had in force at that time a different and much lower rate of fare, and that it

16. That by the enactment of said ordinance, of which Exhibit "X" referred to is a copy, and by other inflammatory proposals submitted to and taken into consideration by said Common Council, and by the action of political candidates and agitators and supporters in connection with the political campaign then pending in the City of Detroit, and the action of the public officials of the City of Detroit in publicly advising the people not to recognize any rate of fare except that provided in said ordinance, Exhibit "X," disturbances and disorders were provoked which resulted in intimidations, assaults and injuries to petitioner's employees operating its cars, and in injury to and destruction of its property, many of its cars being torn from the tracks; bricks, stones and other missiles were thrown through the windows of cars, injuring passengers and petitioner's em-

was then and is now proposed to make the non-franchised lines bear all the increased cost of operation of all the street railway lines within said city; that such new rates of fare thus fixed arbitrarily by the plaintiff are not in all respects reasonable, as in said paragraph alleged; and this defendant avers that said fares so fixed were unreasonable and wholly void, and that the plaintiff had no right or power to put such fares in force and effect against the will and without the consent of the city and its citizens or prior to judicial determination; that the fare which is fixed in the ordinance, Exhibit "X," will be sufficient to provide large returns upon the actual value of plaintiff's property which is used on the non-franchised lines; that the non-franchised lines of said street railway system is the cream and heart and real value of its street railway properties, and that where plaintiff has no rights whatever in the streets it proposes and expects to obtain in increased fares from passengers riding thereon sufficient and enough to make up all its alleged losses sustained upon any other or all its franchised lines, which is a monstrous proposal.

16. This defendant denies the allegations in the sixteenth paragraph of said petition and avers that after the ordinance Exhibit "X" became effective there was no violence, no disorder, and no intimidations occurring; that one of the chief purposes which the passage of said ordinance had was to prevent and stop disorder; that the disorders in said paragraph mentioned resulted from the high-handed methods which had been used by the plaintiff in fixing arbitrarily the high rate of fare, and that there were no inflammatory proposals, nor did agitators or political campaigners have anything to do with the violence and disorders that occurred in said city but were provoked wholly and alone by the arbitrary and reprehensible conduct of the plaintiff in going beyond and outside of the law to exact unjust and unreasonable rates for the transportation of passengers; that if it

ployees operating such cars, and a general state of riot and disorder was created. That thereupon petitioner called upon the public authorities of the City of Detroit to protect its employees and property in the operation of its cars, which they refused to do, but joined in advising the public not to pay any fares other than those provided for in said ordinance, Exhibit "X," and although the conduct of petitioner's employees was entirely peaceable, and while no force was employed to eject from its cars passengers refusing to pay fares, there being no other alternative than to use such force as was available to prevent passengers riding upon its cars without paying fares, said employees stopped petitioner's cars and thereupon the Police Department of the City of Detroit, acting under the direction of its Mayor, arrested petitioner's employees on the alleged ground of obstructing the streets of the city. Very many people entered petitioner's cars demanding six tickets for twenty-five cents and on being informed that no such tickets were available insisted upon being carried on petitioner's cars without the payment of any fare, and after Monday afternoon when the instructions were given employees in accordance with the President's letter above herein set forth, a very large number of passengers were carried without the payment of any fare.

17. That attached hereto and made a part hereof, marked Exhibit "B" and to which reference is hereby made, is a copy of the bill of complaint filed by the City of Detroit, defendant and appellee herein, in the Circuit Court for the County of Wayne, In Chancery, above herein referred to.

18. Referring to paragraph 4 of said bill of complaint, Exhibit "B," petitioner says that it admits that prior to August 7, 1918, it had discontinued the sale of tickets on some of its lines of street railway in the City of Detroit and began to and did charge straight five cent fares on such lines. Petitioner further states that had not been for the passage of said ordinance, riots and disorders would have continued because of the lawlessness of the plaintiff in exacting such unreasonable and excessive rates of fare for passenger transportation. This defendant denies that the city officials did anything to provoke disorders and riots, which resulted in the destruction of property, and avers in that behalf that the police and city officials did everything within their power to maintain order and suppress violence and to preserve property and property rights; that the City of Detroit has the power to fix rates of fare over and through and in streets where public service corporations have no rights, or no contract rights, and denies that the plaintiff has any power, derived from the charter of Detroit or by law of Michigan, to fix passengers' fares or transportation charges within said city, and said defendant avers in that behalf that the action of the plaintiff in raising the fare was contrary to the law of Michigan which is plainly written on the statute books. See, Compiled Laws of Michigan 1915, Section 8551.

17. This defendant admits the allegations of paragraph seventeen of said petition.

18. This defendant in answer to paragraph eighteen says that it denies that it gave said plaintiff an invitation to occupy its streets after 1909, and avers in that behalf that the occupation of said streets with said lines of railway is of more benefit and advantage to the plaintiff than it is to the defendant; indeed, if

even if, as alleged in said bill of complaint, the franchise rights of the defendant Company in the streets named in said paragraph 4 had lapsed, they lapsed in the year 1909, and denies that petitioner was occupying such streets without legal right, and alleges that it was occupying such streets by invitation of the City of Detroit, with its acquiescence, in the discharge of what was recognized by said City as well as by the said defendant Company as a duty that the defendant Company owed to the public of the City of Detroit to provide means of transportation for its people, as they had no other means of transportation.

Petitioner further admits that on or about August 7, 1918, as above herein stated, it raised its rates of fare for the transportation of passengers over certain of its lines in the City of Detroit to a cash fare of six cents, or ten tickets for fifty-five cents, with the right of transfer to all lines in the City of Detroit; but it alleges in that connection that in so doing it did not charge a rate of fare that would be more than reasonable compensation to it for the service it was required to render and did render.

19. Referring to the allegation in said bill of complaint, Exhibit "B" "that through its officers and agents it undertook by various or any means or devices to force the collection of said rates from the public using the cars generally, or gave instructions to its agents and employees of such kind and character that it would result in bringing about riots or breaches of the peace and the destruction of property in the event of the failure of passengers entering upon its cars to pay the rates so fixed," petitioner alleges that all of its employees operating its cars were explicitly instructed to avoid at any hazard engaging in any altercation with its passengers, and especially not to engage in any physical contest or efforts to remove passengers who might refuse to pay the fares demanded from its cars; its instructions to such agents and employees being positive that they should avoid

plaintiff should stop the operation of cars upon the non-franchised lines in said city, its whole railway system in Michigan would be reduced in value one-half; that while railway tracks are upon said streets on non-franchised lines, it is within the province and power of the city to prescribe the conditions under which cars may be operated thereon as well as it is within the power of the city to prescribe conditions under which all other traffic may be carried on and permitted. This defendant denies that on August 7, 1918, the increased rates of fare fixed by the plaintiff for the transportation of passengers over certain of its lines were reasonable or legal, and avers in that behalf that a cash fare of six cents or ten tickets for fifty-five cents is unreasonable and unjust; that such rate of fare is excessive and void, and that the plaintiff has no right independently and alone to prescribe such rate of fare.

19. In answer to paragraph nineteen this defendant says that the plaintiff may have instructed its employes operating its cars to not engage in any physical contest or efforts or to remove from its cars passengers who might refuse to pay fares demanded, but that the fact is that they did in many instances stop the cars and put off the passengers who refused to pay such increased fares; and that, from the conduct of the plaintiff and its employes in so demanding and exacting such excessive increased fares, disorders and violence resulted, as might have been expected.

by all means using any force whatever to passengers who might refuse to pay such fares; that in the event of numbers of passengers entering upon said cars refusing to pay such fares, to stop such cars.

20. And before the filing of said bill of complaint, Exhibit "B," to wit: on the early afternoon of Monday, August 12th, fearing that disturbances might be created by troublemakers and lawbreakers, instructions were given by petitioner to all operators of its cars to keep the cars running even though no fares were paid. That such instructions were covered by a letter of which the following is a copy:

"To All Superintendents,
"Detroit City Lines

"In view of the great disorder and widespread interference with the car service throughout the city, resulting from the action of certain political candidates for office, as well as the action of the city officials, and the misinformation so generally furnished the public by the daily newspapers, it seems necessary in the interest of public safety, and also as a measure of assistance to the workers in munition factories, and to prevent further destruction of property and possible loss of life, to instruct your conductors to inform passengers on the so-called five-cent lines that the rate of fare is 6c or ten tickets for 55c, but that for the time being they will permit passengers to ride upon the payment of any fare, and even to ride free, to avoid assault. Also, to instruct them to obey any order of the police, however wrong or harsh it may be. You will take prompt action to carry out this instruction.

"The company is taking steps to promptly apply to the courts for such relief as is proper.

"Advise your conductors to disregard political and newspaper threats, and to conduct themselves so as to merit the commendation of all good and loyal citizens. "Yours truly,

(Sgd ) "F. W. Brooks,
E.E.S. "President."

20. For want of knowledge this defendant neither admits nor denies that part of paragraph twenty which purports to be instructions by the plaintiff to all its superintendents with reference to the operation of its cars on August 12, 1918. This defendant denies, as in said paragraph alleged, that there was no substantial objection made by the public to paying such fares until after the enactment of the ordinance, "Exhibit X." This defendant alleges that there always was substantial objection to the payment of the increased rates of fare thus fixed arbitrarily by the plaintiff, and that violence and disorder resulted to such an extent that the common council of the City of Detroit enacted said ordinance, Exhibit "X," for the purpose of maintaining order, protecting property and preserving and safeguarding life as well as to fix the rates of fare on lines where franchises had already expired. This defendant denies that the public generally recognized the necessity on the part of the plaintiff to increased rates of fare, and avers in that behalf that the plaintiff is undertaking to compel the city and the car riders to pay a sufficient rate of fare to give a return upon a valuation of its property which is largely in excess of its true worth; that within recent years the city has at great expense had the property of the plaintiff appraised and valued; that in 1909 it was appraised at $11,121,724.86; that subsequently the city again had an appraisal made of plaintiff's property which showed that the value of said property was something like to wit, $17,500,000.00; while in this proceeding the plaintiff claims a valuation of $33,500,000.00; that such valuation is taken from the books of the company and is not the true value of the plaintiff's property. It is book value and nothing else, and embraces all of the railway property in the city,

which letter was communicated to the superintendents referred to and by the superintendents promptly communicated to all operators of cars. That in fact, until after the enactment of the ordinance referred to as set forth in paragraph 2 of the bill of complaint herein, there was no substantial objection made by the public to paying such fares. And the defendant alleges that but for the enactment of the ordinance referred to herein, and the agitation of candidates for office and politicians endeavoring to promote their interests by trying to make political capital out of the action of the defendant company to increase its revenues so as to give it reasonable compensation for the service rendered, there would have been no opposition to payment by the public of the fares so required, as such increase of fares had been made by the defendant company recently following an award made by the War Labor Board of the United States fixing the rates of compensation of the employees of the defendant company, which increase added to its operating expenses about two million dollars per annum. And the public generally recognized the necessity on the part of the defendant company to increase its rates of fare to meet such increased cost of operation, as well as other increased costs in connection with the operation of its cars; and that it was only because of the enactment of the ordinance aforesaid, which was in violation of the rights of the defendant, as set forth in said bill of complaint, Exhibit "B," above herein referred to, that defendant was deprived of the right to collect fares sufficient to provide reasonable compensation for services to be rendered, and the enactment of said ordinance was so intended to operate; and all of the disorder, rioting and destruction of property that occurred followed the enactment of said ordinance, and because of the enactment thereof, and because of the public declaration of the officials of the City of Detroit, advising the public to refuse to pay any fares excepting in accordance with the terms of such ordinance.

while the value should cover for this case only the non-franchise property in the city.

21. Referring to the allegations made in said bill of complaint, Exhibit "B," defendant admits that many thousands of men employed in factories of large size are actively engaged in the manufacture of products of war within the City of Detroit, manufacturing munitions, aeroplanes, submarine destroyers, etc., and that such products are indispensable to the Army and Navy, and the prosecution of war. Defendant denies that its action in connection with raising its rates of fare was either unpatriotic or illegal; on the contrary it alleges that the action of the Common Council of the City of Detroit in enacting such ordinance was unpatriotic or illegal and in express conflict with the recommendation of the War Labor Board of the United States that the public authorities of the City of Detroit should increase the rates of fare for the transportation of passengers over defendant company's street railway system; and such increase in the rates of fare on the part of the defendant was only established after it had appealed to the Common Council of the City of Detroit to make reasonable provision for the increased cost of operation by reason of the award of the War Labor Board of the United States; and in this connection the defendant especially refers to the copy of the award of said War Labor Board attached to the plaintiff's bill of complaint, and of the recommendations of such Board in connection with the necessity of increasing the rates of fare.

That the patriotism of the Common Council of said City of Detroit, and the city officials thereof, was manifested by summarily refusing to act upon the recommendation of the War Labor Board of the United States, and promptly enacting the ordinance referred to which greatly reduced the rates of fare intsead of increasing the same, as said United States War Labor Board had advised was necessary.

That, as petitioner believes and alleges, it is necessary, to protect its rights, that an injunction issue restrain-

21. This defendant in answer to paragraph twenty-one admits that thousands of men are employed in factories in said city and are actually engaged in the manufacture of products of war within the city, manufacturing munitions, aeroplanes,, submarine destroyers, etc., and that such products are indispensable to the army and navy in the prosecution of the war; but this defendant denies that that furnishes any reason for the plaintiff to arbitrarily fix unreasonable fares for the transportation of passengers over its non-franchised lines of railway within said city; and avers that it was unpatriotic and unlawful for the plaintiff to thus arbitrarily and without the consent of the city or its common council to fix rates of fare so as to receive a return upon its book valuation of its property. This defendant is advised and believes that the true valuation of plaintiff's property is not in excess of, to wit, $17,500,000.00, in the entire city, including properties not used in the railway business, such as unused real estate.

ing and enjoining the defendant municipal corporation, its officers, agents and employees, as follows:

(a) From enforcing, or attempting to enforce, any of the provisions of said ordinance adopted by the Common Council of the City of Detroit August 9, 1918, of which Exhibit "X" attached to plaintiff's bill of complaint above herein referred to is a copy.

(b) From interfering in any manner with the collection by the plaintiff company of the reasonable rates of fare established by it as of August 7, 1918, namely, a six cent cash fare or ten tickets for fifty-five cents, with universal transfers over any and all of plaintiff company's lines.

This petition is based upon

(1) The record and files in this cause, especially the bill of complaint filed herein and the exhibits thereto attached;

(2) the affidavits of Frank W. Brooks, Ellsworth J. Burdick, John Kerwin, W. D. Mahone, Carey Ferguson, William Bonthron, Robert F. Rifenberick and Bernard F. Weadock presented herewith.

DETROIT UNITED RAILWAY,
By Frank W. Brooks, *President.*

BERNARD F. WEADOCK,
*Attorney for Plaintiff,*

STEVENSON, CARPENTER, BUTZEL & BACKUS
and
DONNELLY, HALLY, LYSTER & MUNRO,
*Of Counsel.*

STATE OF MICHIGAN } ss.
County of Wayne. }

On this fifteenth day of August, A. D., 1918, before the undersigned, a Notary Public in and for said county, personally appeared Frank W. Brooks, who being by me duly sworn says:

That he is President of the Detroit United Railway and subscribed the foregoing petition in its name, by its authority.

That he has read the foregoing petition so subscribed, knows the contents thereof and that the same is true, except as to such matters as are therein stated on information and belief, and as to such matters he believes them to be true.

Clarence B. Zenadski,
Notary Public, Wayne County, Mich.

My Commision expires April 26, 1922.

22. This defendant for further answer to the plaintiff's petition says that the question of the valuation of plaintiff's property has for many years been a subject of contention and dispute between the City of Detroit and the plaintiff railway company; that no appraisal of said property made by said company or by said city ever determined the value of plaintiff's property to be $33,500,000.00 or thereabouts; that the highest appraisal of said property of which the city has any knowledge was $26,563,435.00, less depreciation, $23,609,765.00; an apparisal made by Professor Cooley in 1915, and that this valuation is not the correct one, as this defendant is advised and believes; that an appraisal made by the city of said properties was not above, to wit, $18,000,000.00, and one appraisal was as low as $11,121,724.86, which was made in 1911, and that both of such appraisals included franchise values which do not now exist.

This defendant further shows that the proper rate of fare for the carriage of passengers upon lines of railway within said city has for many years also been a matter of contention and dispute between the parties hereto; that the city has for a long period of time maintained that the rate of fare should not be above three cents, and that a fair return upon the property invested in street railways in said city can be had where the fare is not in excess of that, and that a fare in excess of said rate yields more than a fair return upon actual investment; that the Detroit Railway carries passengers for eight tickets for a quarter most of the day and single passengers for a five-cent fare on franchise lines; that there are upwards of, to wit, between ninety and one hundred miles of such street railway lines within said city; that the principal part of the remainder of the railway lines of said plaintiff in said city operates upon a different and a higher passenger fare rate basis, and that for the purpose of determining what is a fair rate to be charged for the carriage of passengers upon the non-franchised lines in said city, said non-franchised lines should be segregated from the franchised lines because they are independent railway systems notwithstanding they are united, as the name of the plaintiff implies; that when they are so segregated it will be found that for the value of the investment great returns may be received upon rates of fare fixed in the ordinance here in question; that before such lines were consolidated they were operated as independent railway systems. They may be thus operated now, and if so operated it will be ascertained that the non-franchised lines carry approximately seventy-five per cent of the passengers, and that the principal part of the revenue of said railway system is derived from the non-franchised lines of railway; that to impose a six-cent fare or ten tickets for fifty-five cents and make them apply only to the non-franchised lines is discriminatory and unjust, as this defendant is informed and believes;

that the plaintiff should not be permitted by judicial decision or otherwise to make up losses which it may sustain due to war conditions in the operation of its franchised lines by imposing an unreasonable fare upon the passengers of the non-franchised lines; besides, said plaintiff has no rights and possesses no power to prescribe rates of fare above those which were in force during the period of its railway grants.

This defendant further shows that the plaintiff has in the past and for a long period of time charged and collected various rates of fare for the carriage of passengers upon its lines of railway in the City of Detroit; that for the carriage of passengers upon the franchised lines there are now in force the following rates of fare, to wit: Eight tickets for a quarter good between the hours of 5:15 a. m. to 7:30 p. m.; also six tickets for a quarter good all the time, also a straight five-cent fare good all the time, and that it is not the purpose and intention, nor would it be legal, for the plaintiff to change the aforesaid rates of fare on said franchised lines because of franchise requirements.

This defendant further shows that upon the non-franchised lines of railway the plaintiff has charged and collected various rates of fare in the past; that most of the franchises under which said lines were constructed originally provided that the rate of fare should be five cents; subsequently, by ordinance, workingmen's tickets were provided and sold upon those lines at the rate of eight tickets for a quarter, each of which entitled the passenger to a ride during certain hours of the day; that after the expiration of said franchises a rental of $300.00 per day was demanded by the defendant and paid by the plaintiff for the use and occupation of the streets upon which said lines of railway were operated; that upon August 7, 1913, the said rental charge was discontinued and a day to day (temporary) agreement was entered into between the parties hereto whereby said plaintiff sold

tickets upon its cars at the rate of seven tickets for a quarter, each of which entitled a passenger to a ride upon any or all of the street railway lines of the plaintiff within the one-fare zone, so-called, which embraced all of the city and some territory in addition thereto; these tickets were good twenty-four hours of the day, with transfer privileges; also, the aforesaid workingmen's tickets were continued in use and were sold at the rate of eight for a quarter, good for a single fare during certain hours in the morning and evening; that, in the early part of the year 1918, the plaintiff abrogated said temporary agreement and discontinued the sale of said seven for a quarter tickets and proceeded to collect straight five cent fares upon its non-franchised lines, so-called; that, on August 2, 1918, about six months after it had discontinued the sale of said seven tickets for a quarter, said plaintiff in a communication to the Mayor of the City of Detroit proposed rates of fare, as follows:

(a) That for the time being a five cent fare with a charge of one cent for a transfer be established for all lines in the city one fare zone. * * *

(b) That the following rates of fare be established within the one fare zone—single cash fare six cents, ten tickets for fifty-five cents, both with free transfers. The rates of fare now in effect on the Three Cent Lines to remain unchanged, except the single six cent cash fare and the ten tickets for fifty-five cents will be accepted on these lines good for a transfer to the so-called Five Cent Lines.

See, plaintiff's bill of complaint, pp. 27, 28. That the Mayor referred said communication to the Common Council on (Common Council Journal 1918, p. 971) on August 6, 1918. That on August 8, 1918, before a reply could be made to the foregoing, the plaintiff arbitrarily undertook to put said proposition "b" into force and effect and also discontinued the sale of the aforesaid workingmen's eight for a quarter tickets. This action upon the part of the plaintiff in thus putting into

force the fares specified in the aforesaid proposition "b" was arbitrary, unwarranted, illegal and contrary to law, and resulted in the disorders and violence as above set forth.

Defendant further answering avers that on July 30, 1918, the Common Council of the City of Detroit directed the Corporation Counsel of said city to take proceedings forthwith to secure a judgment of ouster against the Detroit United Railway in the so-called non-franchise streets in the City of Detroit, and afterwards on to wit August 9, 1918, the Common Council by resolution declared that all right and title on the part of the Detroit United Railway to franchises and tracks maintained in the non-franchise streets have terminated by limitation and are without the express or implied consent of the City of Detroit, and further directed the Corporation Counsel to enforce the rights of the City of Detroit and to repossess itself of said streets, and that such suit has been instituted by the City of Detroit and is now pending.

This defendant further says that the plaintiff is not entitled to the relief which it prays for in the petition and that the defendant should not be enjoined by order of this court from enforcing the provisions of the ordinance, Exhibit "X," and that this court should not, before ascertaining the true value of the plaintiff's property, fix the rate of fare for passengers upon the non-franchised lines in said city at six cents or ten tickets for fifty-five cents.

Wherefore, this defendant prays that the petition of the plaintiff be summarily dismissed.

(Sgd.) ALLAN H. FRAZER,
*Corporation Counsel.*
*Attorney for Defendant.*

(Sgd.) RICHARD I. LAWSON,
*Of Counsel.*

STATE OF MICHIGAN, )
)ss.
County of Wayne. )

On this 29th day of August, 1918, personally appeared before me Allan H. Frazer, Corporation Counsel of the City of Detroit, who being duly sworn deposes and says that he subscribed the foregoing for and on behalf of the City of Detroit; that he has read the foregoing answer and knows the contents thereof and that the same is true except as to those matters therein stated to be on information and belief and as to those matters he believes it to be true.

Nicholas J. Dixon,
Notary Public, Wayne County, Mich.
My Commission expires Dec. 25, 1921.

## EXHIBIT 1

THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
IN EQUITY

DETROIT UNITED RAILWAY COMPANY,
a Michigan Corporation,
Plaintiff,
vs.
CITY OF DETROIT,
a Municipal Corporation,
Defendant.

## MEMORANDUM OPINION.

This is a bill seeking an injunction restraining the City of Detroit from enforcing a certain ordinance which fixes the rate of fare to be charged by the Plaintiff Company for carrying passengers on certain of its street railway lines within said city. Plaintiff has also prayed for a preliminary injunction re-

straining the enforcement of such ordinance *pendente lite*. The bill also asks for a decree adjudging said ordinance to be null and void, as contrary to the United States Constitution.

It appears from the bill that the Plaintiff is operating a street railway system in the City of Detroit, consisting of many different so-called lines; that on some of said lines it holds franchises granted to its predecessors in title by various villages and townships at a time when the territory covered by said so-called "franchise lines" was included in such villages and townships respectively and prior to the annexation of such territory to the City of Detroit, which took place after the granting of such franchises; that on other lines in Plaintiff's street railway system in said City, the City claims that any franchises previously granted have expired although Plaintiff has been permitted to continue the operation of its street cars thereon subject to conditions imposed by said City; that these so-called "non-franchise lines" and the "franchise lines" previously mentioned are all continuous parts of one general system, in many cases one portion of a street containing its rails being in a franchise section of the City and another portion thereof being in a non-franchise section; that the Common Council of the City of Detroit has just enacted an ordinance prescribing the maximum rates of fare that may be charged by the Plaintiff upon its so-called "non-franchise" lines within the City; and that the rates so prescribed are insufficient to enable the Plaintiff, if operating under them, to receive a fair return upon its investment in its property used in operating its street cars in said City, for which reason said ordinance deprives the Plaintiff of its property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, and is therefore confiscatory and void.

It is also alleged that such ordinance impairs the obligations of the various contracts owned by said Plaintiff in the form

of the franchises already referred to, in that it attempts to prevent the Plaintiff from charging the rates of fare allowed in such franchises, and that for that reason also it is contrary to the Federal Constitution and void.

A careful examination of the bill discloses no allegations to the effect that the Plaintiff is compelled to operate its street cars on any of the so-called "non-franchise" lines within the City of Detroit. No claim is made that upon the expiration of the franchises previously received from the City any of such franchises were renewed or that Plaintiff has since that time received permission from the municipal authorities to operate its street cars on such lines on any terms or conditions inconsistent with those prescribed in the ordinance complained of. In short, no contractual relation, either express or implied, between the Plaintiff and the City of Detroit as to the so-called non-franchise lines is claimed to be in force and no reason appears from this bill why, if the Plaintiff can not profitably operate its street cars on those lines on the terms imposed by such ordinance, it should continue to do so. The case is thus clearly quite different in its facts from the case of the *City and County of Denver vs. Denver Union Water Co.*, 38 Sup. Ct. Rep. 278, recently decided by the United States Supreme Court and cited by Plaintiff in its behalf. In that case a majority of the court were of the opinion that the conduct of the Water Company and of the municipality showed an understanding and agreement between them to the effect that the Water Company was not only permitted but also required to continue to supply the public with water after the expiration of the franchise in question and after the adoption of the ordinance complained of, which ordinance, in fact, the court construed, in the light of the circumstances disclosed by the record, "as the granting of a new franchise." The court refers in its opinion to various facts and to the provisions of the ordinance indicating such

an understanding and agreement. Among such provisions it mentions the clause requiring the company to install a meter for any person desirous of using water by meter and it cites the section of the ordinance imposing fines upon the company and its agents for any violation of such ordinance. In that case, then, both parties to the suit, and the court proceeded upon the assumption that the only question involved was the reasonableness of the rates complained of, and this was the question determined by the court. The case is, of course, clearly distinguishable from the present case. Here the Plaintiff makes no claim that it is under duty, or that it possesses the right, to continue to operate its street cars upon what it refers to throughout its bill as the "non-franchise" lines in the City.

It has in fact been decided by the United States Supreme Court that with the expiration of the franchises formerly held by this Plaintiff the right of the latter to occupy streets of the City with its tracks, also expired.

*Detroit United Railway vs. City of Detroit*, 229 U. S. 39.

In declaring the status of the Railway Company the Court, in the case just cited, used the following language:

"Nor do we find more force in the claim of an implied contract to permit the railway to remain in the streets under such reasonable arrangements for public service as the situation might require. The right to grant the use of the streets was in the city. It had exercised it, had fixed with agreement with the railway the definite period at which such rights should end. At their expiration the rights thus definitely granted terminated by force of the terms of the instrument of grant. The railway took the several grants with knowledge of their duration, and has accepted and acted upon them with that fact clearly and distinctly evidenced by written contract. The rights of the parties were thus fixed and cannot be enlarged by implication. (Citing cases).

"We are of the opinion that where a street railroad is authorized to operate in the streets of a city for a definite and fixed time, and has enoyed the full term granted, it may, upon failure to renew the grant, be required, within a reasonable time, to remove its tracks and other property from the streets. In this case the Supreme Court of Michigan held that if the city, by the resolution of its common council should require the removal of the railway's property from the streets, the removal should be effected by the railway within ninety days after the notice of the resolution, unless it be given a longer time or the time given be extended by like resolution. In thus providing for the removal of the property of the railway from the streets of the city, we are unable to see that any contractual obligation was impaired, or that the property of the railway was taken without due process of law, and these are the contentions as to Federal questions argued in this connection."

No reason appears in this bill, and I can perceive no legal reason, why the Plaintiff could not, at the time of the enactment of the ordinance complained of, or can not now, discontinue the operation of its street cars over the portions of its lines on which it does not claim to hold franchises. The ordinance clearly provides that its terms shall only apply to such lines. It is true that in Section 4 of the ordinance it is provided that, "Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents;" but the ordinance must be read as a whole, and when so read, I am satisfied that it appears therefrom that it was not the intention of the City to attempt to interfere with any rights of the Plaintiff under any of its franchises. Section 6 positively provides that, "The provision of this ordinance shall not be construed as an attempt to impair the obligations of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city except where the same

is governed by the provisions of such contract."

I think that the meaning of the language of Section 4 quoted is that where one trip on a line begins on franchise territory and ends on non-franchise territory or vice versa, the total fare for such trip must not exceed the sum mentioned and that if the Plaintiff charges that amount (the maximum under any of its franchises) for the portion of such trip lying within franchise territory, in such case it can not charge any fare for the portion of the trip lying within the non-franchise territory. It is, of course, entirely within the power of the City to prescribe such a condition for the privilege of using the non-franchise territory in carrying a passenger on such a trip, and the result is that the ordinance applies only to the non-franchise lines.

If then, the Plaintiff is not required to operate its cars in return for the rates of fare thus prescribed by the ordinance, it certainly can not properly be said that it is deprived of any of its property by reason of the ordinance in question. If it is not compelled to accept this rate of fare it is not concerned with the question of the adequacy of such fare. If Plaintiff could not complain of the removal of its tracks from the streets covered by this ordinance or of the refusal of the City to permit it to receive any rate of fare on such streets, certainly it can not legally complain that it is permitted to remain in such streets and receive a fare which it claims is inadequate. It seems, therefore, clear to me that Plaintiff has not shown any deprivation of its property without due process of law, or any impairment of its contractual obligations as charged in the bill, and those being the only grounds for relief alleged, I am of the opinion that the latter should be dismissed.

The conclusions thus reached, seem to me so plainly correct that I do not deem it necessary to wait for a motion to dismiss the bill, but am satisfied to order a dismissal on my own motion. I have

no doubt that the Court has power to enter such an order.

*Equity, Rule* 29;
*McGuire vs. Pensacola City Company,* 105 Fed. 677;
*O'Connell vs. Mason,* 132 Fed. 245;
*Jackson Co. vs. Gardiner Investment Co.,* 250 Fed. 113;
*Fougeres et al vs. Jones et al,* 66 Fed. 316.

For the reason stated a decree may be entered dismissing the bill for want of equity, and it necessarily follows that the motion *ore tenus* for a preliminary injunction, based as it is upon the same grounds as those alleged in the bill, must be denied.

.....

Detroit, Michigan,
August 13, 1918.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

| | |
|---|---|
| DETROIT UNITED RAILWAY, a Corporation, Plaintiff in Error, vs. CITY OF DETROIT, a Municipal Corporation, Defendant. | No. 666. |

## MOTION TO ADVANCE OR GRANT INJUNCTION PENDING HEARING.

And now comes the plaintiff in error in the above entitled cause by Elliott G. Stevenson and John C. Donnelly, its Attorneys, and moves the court that an order be entered herein advancing said cause for hearing upon the docket of said court, for the October term, 1918, at an early date, for the following reasons:

1. The only question in issue upon the appeal herein is the question of the jurisdiction of the court below.

2. The circumstances attending the dismissal of the plaintiff's bill of complaint in the District Court and of the

situation of the defendant in connection therewith on appeal herein are special and peculiar.

3. The plaintiff by the delay is suffering irreparable injury and damage.

In case the foregoing motion to advance said cause for early hearing shall not be granted, said appellant moves the court to grant its writ of injunction to restrain the defendant from enforcing or attempting to enforce the provisions of the ordinance referred to in the plaintiff's bill of complaint filed in the District Court as prayed for in said bill of complaint pending the hearing and determination of this cause in this court, for the following reasons:

(a) That said ordinance referred to, adopted by the common council of the City of Detroit, August 9, 1918, by its terms, impairs the obligations of existing contracts, to wit, franchises as shown in and by the allegations of said bill of complaint filed in the said District Court.

(b) Because said ordinance by its terms takes the property of the plaintiff without due process of law in that it fixes rates of fare for transportation of passengers over the plaintiff's street railway system in the City of Detroit so low as to deprive plaintiff of sufficient revenue to even meet the operating expenses of the plaintiff's railway system and makes no provision whatever for reasonable return upon the value of the plaintiff's property employed in rendering the service required by the people of the City of Detroit.

(c) Because the plaintiff Company is suffering a loss in excess of two thousand dollars ($2000) a day in operating its street railway system in the City of Detroit under the terms of said ordinance.

This motion is based on the bill of complaint filed herein and the affidavits of William D. Bonthron, Robert B. Rifenberick, Frank W. Brooks, Bernard F. Weadock, Ellsworth J. Burdick, Edward H. Ives, and John Kerwin filed herewith.

ELLIOTT G. STEVENSON,
JOHN C. DONNELLY,
*Attorneys for Plaintiff in Error.*

WILLIAM L. CARPENTER,
P. J. M. HAILY,
BERNARD F. WEADOCK,
*Of Counsel.*

## BRIEF STATEMENT OF MATTER INVOLVED.

Plaintiff filed its Bill of Complaint in the United States District Court for the Eastern District of Michigan, Southern Division, to have an ordinance adopted by the Common Council of the City of Detroit declared void and to prevent its enforcement, and to that end prayed for a temporary injunction restraining the enforcement of the same pending the hearing of the case. This Bill of Complaint was filed August 12, 1918.

Upon the filing of the Bill of Complaint with the Clerk of the United States District Court, the Honorable Arthur J. Tuttle, District Judge, directed that the hearing upon the plaintiff's application for temporary injunction be fixed for August 13, 1918, at the opening of Court and gave the Corporation Counsel of the City of Detroit notice of the time fixed for such hearing.

The plaintiff in its Bill of Complaint alleged that it was the owner of certain unexpired franchises granted by municipalities adjoining the City of Detroit, which municipalities, or portions of them, including streets covered by such franchises, were subsequent to the granting of the same annexed to the City of Detroit and at the time of the enactment of the ordinance complained of were embraced within the territorial limits of the City of Detroit.

Among such existing franchises were franchises granted by the Village of Fairview on East Jefferson Avenue, covering tracks three miles in length on said Avenue now within the territorial limits of the City of Detroit, but which, when such franchise was granted, was within the territorial

limits of the Village of Fairview; by the Village of Highlank Park on North Woodward Avenue, covering tracks two miles in length on said Avenue now within the City of Detroit, but which at the time such franchise was granted was within the limits of the Village of Highland Park—both of which franchises authorized the plaintiff to collect from each passenger entering its cars within such limits a cash fare of five cents without any transfer privileges or any modified fare by the sale of tickets or otherwise.

The plaintiff in its Bill of Complaint also alleged that the provisions of such ordinance complained of required it to carry passengers over such lines for a cash fare of five cents *or* on a ticket to be sold at the rate of six tickets for twenty-five cents and during one and one-half hours in the morning and one hour in the evening on so-called workingmen's tickets to be sold eight tickets for twenty-five cents, and that the provisions of such ordinance impaired the contract rights of the plaintiff under such franchises, in violation of Section One of Article Ten of the Constitution of the United States.

Several of the franchises in question were the same that were considered by this Court in *Detroit United Railway vs. People of the State of Michigan,* 242 U. S., p. 238, where the City endeavored to force the plaintiff, because such territory had by extension of its territorial limits been brought within such limits, to accept on its lines within what was formerly the limits of such adjacent municipalities, so-called workingmen's tickets sold at the rate of eight tickets for twenty-five cents, good for one and one-half hours in the morning and one hour in the evening.

Plaintiff also alleged that under the rates of fare fixed by the provisions of such ordinance, plaintiff's revenue from its street railway system would be insuffi-

cient to provide for the expenses of operation of its railway system in serving the needs of the people of the City of Detroit, and that it made no provision whatever for any return by way of interest on the value of the plaintiff's property—$33,000,000—necessarily employed by it in rendering such service and that this amounted to taking plaintiff's property without due process of law in violation of the provisions of Article Fourteen of the Constitution of the United States.

Upon the opening of said United States District Court on August 13, 1918, counsel for the respective parties plaintiff and defendant, appeared and plaintiff's counsel presented the Bill of Complaint so filed and made an argument in support of its application for temporary injunction.

The District Judge thereupon, without hearing counsel for defendant, and without any answer having been made to the allegations contained in plaintiff's Bill of Complaint, announced that he would deny plaintiff's application for injunction and would also dismiss plaintiff's Bill of Complaint.

A decree was, accordingly, on August 13, 1918, entered in said cause, dismissing plaintiff's Bill of Complaint, from which the appeal now pending in this Court was duly taken.

The learned District Judge, after making the announcement referred to,—that he would deny plaintiff's application for injunction and dismiss its Bill of Complaint, filed in said cause an opinion found on pages 197 to 201, inclusive, of the Record, in which, in conclusion, he stated:

> "It seems, therefore, clear to me that plaintiff has not shown any deprivation of its property without due process of law, or any impairment of its contractual obligations as charged in the bill, and

these being the only ground for relief alleged, I am of the opinion that the latter should be dismissed."

The learned District Judge also in such opinion construed the provisions of Section 4 of such ordinance as follows: (R. p. 200)

"* * * that where one trip on a line begins on franchise territory and ends on non-franchise territory, or vice versa, the total fare for such trip must not exceed the sum mentioned and that if the plaintiff charges that amount (the maximum under any of its franchises) for the portion of such trip lying within franchise territory, in such case it cannot charge any fare for the portion of the trip lying within the non-franchise territory."

This construction is based in part at least on the provisions of Section 5—"The provisions of this ordinance shall not be construed as an attempt to impair the obligation of any valid contract but shall apply to and govern all such street railway passenger traffic in the City except where the same is governed by the provisions of such contract,"—and this notwithstanding the allegations contained in plaintiff's Bill of Complaint, which were neither denied nor otherwise answered, as follows:

A. "That in and by the provisions of such ordinance, especially the provision of Section 4 thereof, as follows:

'Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for 25 cents.'

it was intended to compel the plaintiff company to carry all passengers entering upon its cars on any

line in said City for the rates of fare provided for in said ordinance, regardless of the provisions of the existing ordinances, under which plaintiff is entitled to charge a higher rate of fare. And it was expressly intended by reason of the alleged claim on behalf of the said City of Detroit that a large part of the lines operated by the plaintiff company within the limits of the City of Detroit were non-franchise lines, that all passengers entering cars upon said non-franchise lines should be entitled to transfers carrying them over any and all lines of said plaintiff company anywhere within the limits of the City of Detroit, and if the provisions of such ordinance are followed it has such effect;" and

B. "That the pretended exception contained in Paragraph 5 of said ordinance so adopted by the Common Council of the City of Detroit, at its meeting held August 9, 1918, to-wit:

> 'The provisions of this ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the City, except where the same is governed by the provisions of such contract.'

was intended to be misleading and to create confusion. And said pretended exception was not incorporated in said ordinance in good faith to protect the franchise rights of the plaintiff company on any of its lines, for notwithstanding such provision, the public authorities of the City of Detroit have publicly advised and are still advising, all passengers entering cars of plaintiff company on any of its lines, no matter whether franchise or non-franchise

lines, to pay no fare for transportation over such lines, except as expressly provided for in such franchise."

C. "That it is the intention and purpose of the Mayor and Common Council of the City of Detroit, when said ordinance becomes effective, on August 13, 1918, to forcibly enforce its provisions as to collection of rates of fare in accordance with the instructions herein set forth, and to prevent the plaintiff company from collecting reasonable rates of fare to provide reasonable compensation for the service it is rendering and must continue to render the people of the City of Detroit, and to prevent the plaintiff company from enforcing the provisions of the unexpired franchises hereinbefore set forth."

"That such impairment of plaintiff company's rights under said several grants, contracts and franchises is a direct violation of the provisions of Section 10, Article One, of the Constitution of the United States."

See pp. 29-33 Plaintiff's Bill of Complaint.

That the learned District Judge also found, in substance: That the plaintiff was under no obligation or duty to operate its cars or carry passengers over the so-called non-franchise lines referred to in said ordinance and that it was entirely within the power of the City to prescribe any condition it saw fit for the privilege of using non-franchise lines and was therefore not in a position to complain that its property was taken without due process of law because the City established a rate of fare that was confiscatory, and this notwithstanding the allegations contained in plaintiff's bill of complaint, which were not denied or otherwise answered, as follows:

"That the population resident within the territorial limits of the City of Detroit exceeds 750,000, and is distributed over all the sections and parts thereof.

That the City of Detroit is an essentially industrial city—very much the largest part of its male population being employed and engaged in great industrial plants and factories being operated within the city limits and adjacent thereto and largely located at the outskirts of the City and for the most part are remote from the residences of the persons employed in such plants and factories, thus necessitating the transportation of employees of said plants and factories to and from their homes to their places of employment.

That the street railway system of the plaintiff company is substantially the only means of transportation for such employees to and from their homes to the places of their employment and the interruption of the operation of plaintiff company's entire street railway system as a single unit for such transportation or the separation of the so-called franchise lines from the so-called non-franchise lines, would paralyze the industrial and business life of the City of Detroit and throw thousands of its residents out of employment and shut down its industrial plants and factories.

That it would be impossible to serve the transportation needs of the residents of the City of Detroit by the separate operation or the discontinuance of the operation of either the so-called franchise lines or the so-called non-franchise lines."

See p. 18 of Plaintiff's Bill of Complaint.

And the further fact that the very act of enacting the ordinance complained of, fixing the company's rates of fare, was recognition that the operation of plaintiff's railway system was necessary to serve the public needs.

**Reasons for the Application to advance the hearing of the cause.**

1. In effect, the only issue in question upon this appeal is the jurisdiction of the Court below—whether the learned Judge was in error in determining *upon the face of the plaintiff's bill* that the jurisdictional facts "that the ordinance complained of was an impairment of plaintiff's contractual rights under the franchises referred to and that the taking of its property without due process of law because of the inadequacy of the rates fixed thereby, did not exist," and therefore the situation of the case comes within the spirit of Supreme Court Rule No. 32.

2. The action of the learned Judge in dismissing the plaintiff's Bill of Complaint when the only question before him was the question of the allowance of a temporary injunction restraining the enforcement of the ordinance in view of the allegations contained in plaintiff's Bill of Complaint, was special and peculiar within the meaning of subdivision 7 of Supreme Court Rule No. 26, for by taking such action, the plaintiff was deprived of the right to secure a speedy determination of the question at issue before him by an appeal from his order denying the granting of an injunction to the Circuit Court of Appeals, where under section 1121 of the United States Compiled Statutes of 1916 (Judicial Code, par. 129) the plaintiff's appeal would have been entitled to precedence as to time of hearing in that Court and plaintiff has been by said action denied such right to a speedy determination of the question as

to whether it was entitled to an injunction restraining the enforcement of such ordinance.

3. The large financial loss that the plaintiff is daily suffering by the enforcement of the provisions of said ordinance, in view of the inadequacy of the rates of fare established thereby, causes the plaintiff great and irreparable injury.

**Upon the question of the granting of an injunction restraining the enforcement of such ordinance, should the motion to advance not be granted, plaintiff submits the following brief statement of facts relating to this subject.**

Up to December, 1917, under the so-called "Day to Day Agreement" of August 7, 1913, the plaintiff was collecting rates of fare as follows: A five-cent cash fare, or tickets sold seven for twenty-five cents, and so-called workingmen's tickets sold eight tickets for twenty-five cents, and in connection with such fare, granting each passenger a universal transfer over its entire system. This rate was found to be wholly inadequate, in view of the increased cost of operation caused by conditions growing out of the War, and, accordingly, in December, 1917, the defendant put into effect rates of fare eliminating the seven-for-a-quarter tickets and leaving the other rates of fare the same as before.

That such rates of fare continued down to August 8, 1918 when a cash fare of six cents, or ten tickets for fifty-five cents with universal transfers upon the so-called five-cent or non-franchise lines, was put into effect.

That under the rates of fare established in December, 1917, the results of the operation of plaintiff's properties within the so-called one-fare zone of the City of Detroit, were as set forth in the following schedule.

| Particulars | Total | Five Cent Lines | Three Cent Lines |
|---|---|---|---|
| Gross Revenue | $6,240,252.96 | $5,035,231.36 | $1,205,021. |
| *Deduct:* | | | |
| Operating Expenses | $4,725,678.72 | $3,630,567.37 | $1,095,111. |
| Taxes | 276,772.84 | 235,683.65 | 41,089. |
| Together | $5,002,451.56 | $3,866,251.02 | $1,136,200. |
| Balance of Revenues after deducting Operating Expenses and Taxes | $1,237,801.40 | $1,168,980.34 | $ 68,821. |
| *Deduct:* | | | |
| Increase in Pay Rolls, as per award of the War Labor Board | $ 944,997.65 | $ 723,962.70 | $ 221,034. |
| Depreciation | 249,230.92 | 201,400.27 | 47,830. |
| Together | $1,194,228.57 | $ 925,362.97 | $ 268,865. |
| Balance—Income or Deficit from operation before providing any return on the investment | $ 43,572.83 | $ 243,617.37 | $ 200,044. |

which shows that upon the five-cent or non-franchise lines, a surplus of $243,617.37 over operating expenses remained applicable to the payment of interest upon the value of the plaintiff's property employed in such operation, which value was, approximately, $25,000,000, a return thereon of six per cent, equalling $750,000, showing that the revenue realized was insufficient to provide for the interest upon the value of plaintiff's property employed above operating expenses, by the amount of $500,000, for six months, while the operation of the so-called three-cent lines under the rates of fare provided for in its franchise shows a deficit in operation for the same period without making any provision for interest upon the value of the property employed in the operation of such lines, of $200,044.54.

Had a straight five-cent fare been in effect on the so-called five-cent or non-franchise lines during such period of six months from January 1, 1918, to July 1, 1918, there would have been applicable to the payment of interest on the value of the property employed, Seven hundred and fifty thousand dollars ($750,000)—Five hundred six thousand one hundred eighty-nine and 84/100 dollars ($506,-

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189.84), leaving a deficit of nearly $250,000 as shown by the following schedule.

| Particulars | Based on Fares Collected | Based on Five-cent Fares |
|---|---|---|
| Gross Revenue | $5,035,231.36 | $5,297,803.83 |
| *Deduct:* | | |
| Operating Expenses | 3,630,567.37 | 3,630,567.37 |
| Taxes | 235,683.65 | 235,683.65 |
| Together | 3,866,251.02 | 3,866,251.02 |
| Balance of Revenues after deducting Operating Expenses and Taxes | 1,168,980.34 | 1,431,552.81 |
| *Deduct:* | | |
| Increase in Pay Rolls as per award of War Labor Board | 723,962.70 | 723,962.70 |
| Depreciation | 201,400.27 | 201,400.27 |
| Together | 925,362.97 | 925,362.97 |
| Balance, representing Income from Operation before providing for any returns on the Investment | $ 243,617.37 | $ 506,189.84 |

Had the provisions of the ordinance complained of been in force during such period on said five-cent or non-franchise lines, there would have been an actual deficit in revenue to meet operating expenses, without making any provision for return upon interest upon the value of the property employed in the operation, of $393,354.96, as shown by the following schedule.

| Particulars | | Amount |
|---|---|---|
| Gross Revenues | | $4,435,117.17 |
| *Deduct:* | | |
| Operating Expenses | $3,659,583.00 | |
| Taxes | 235,683.65 | |
| Increase in Pay-Rolls | 729,764.98 | |
| Depreciation | 203,440.50 | 4,828,472.13 |
| Deficit from operation before making any provision for return on the investment | | $ 393,354.96 |

That the enforcement of the provisions of the ordinance complained of would result in a loss of upwards of $2,000 a day in addition to the loss of interest upon the value of the property employed in rendering the service.

This result is caused in a large degree by the increased cost of operation and especially an increase of nearly $2,000,000 per annum imposed upon the plaintiff by the award of the War Labor Board of the United States giving increased compensation to plaintiff's employes. This award was made August 1, 1918, but made effective as of June 1, 1918. The War Labor Board, of which the Honorable William H. Taft was one of the arbitrators, recognized plaintiff's earnings would be insufficient to meet such increased cost and in its award said:

> "This award increases the maximum rate in Detroit from 40c an hour to 48c an hour. The increase is substantial, but required by the increased cost of living and is fair. Other changes in working conditions more favorable to the men will normally add to the wage cost. The fares allowed to the Detroit Railway are exceptionally low, being 3c a passenger on some lines, 4c on others and 5c on others. *They should all be raised to meet the increased operating cost due to the high prices of needed material and equipment and the increased pay herein awarded.*
>
> "We make part of this award the words we have used in the Cleveland case:
>
> 'We have recommended to the President that special Congressional legislation be enacted to enable some executive agency of the Federal Government to consider the very perilous financial condition of this and other electric street railways of the

country, and raise fares in each case in which the circumstances require it. We believe it to be a war necessity justifying Federal interference. *Should this be deemed unwise, however, we urge upon the local authorities and the people of the locality the pressing need for such an increase adequate to meet the added cost of operation.'"*

The Mayor and Corporation Counsel of the City of Detroit were parties to the hearing before the War Labor Board; asked leave to intervene therein in the interest of the City of Detroit and its people and such leave being granted, they participated in such hearings on May 27th, at Chicago, Ill., and June 28th, to July 3, inclusive, at Washington, D. C.

After the award was made, the plaintiff Company brought the situation to the attention of the Mayor and Common Council of the City of Detroit and especially the recommendation urging upon the local authorities and the people of the locality the pressing need for increased rates of fare to meet the added cost of operation.

The response of the Common Council to the recommendation of the War Labor Board was to adopt the ordinance complained of on August 9th, 1913—very greatly reducing the rates of fare, instead of increasing the same as recommended.

**Reason for granting an Injunction.**

**The plaintiff is suffering great and irreparable injury by the enforcement of such ordinance pending the final hearing of the case.**

ELLIOTT G. STEVENSON,
JOHN C. DONNELLY,
*Attorneys for Plaintiff in Error.*

WILLIAM L. CARPENTER,
P. J. M. HALLY,
BERNARD F. WEADOCK,
*Of Counsel.*

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

DETROIT UNITED RAILWAY CO.,
a Corporation,
Plaintiff and Appellant,
vs.
CITY OF DETROIT,
a Municipal Corporation,
Defendant and Appellee.

No. 666.

## AFFIDAVITS AND EXHIBITS IN SUPPORT OF MOTION TO ADVANCE, OR FOR INJUNCTION.

EASTERN DISTRICT OF MICHIGAN, WAYNE COUNTY, SS.

WILLIAM D. BONTHRON, being duly sworn, says that he is a member of the firm of Price, Waterhouse & Company, Public Accountants, having offices in most of the large cities of the United States, including Detroit, and is the Manager of its Detroit office. That said Price, Waterhouse & Company succeeded to the business of Macpherson, Bonthron & Company. For nine years last

past, deponent, as representative of said firms, Macpherson, Bonthron & Company and Price, Waterhouse & Company, has conducted a continuous audit of the books of the Detroit United Railway, plaintiff and appellant above named, and has become and is familiar and thoroughly acquainted with all such books, accounts and records relating to the earnings, operating expenses, etc., of said Detroit United Railway; and has made a special investigation of such books with reference to the earnings of said company, the operating expenses, etc., relating to its street railway system within the one-fare zone of the City of Detroit between January 1st and July 1st, 1918, and finds from such investigation, and states the fact to be, that the gross operating revenues of said company from its said street railway system within the one-fare zone for such period amounted to $6,240,252.96. That on or about August 1st, 1918, the United States War Labor Board made an award under an agreement entered into between the railway company and its employees engaged in the operation of the company's cars within such district, the result of which increase, applied to all the labor so employed by said company, and the proportionate increase to the other labor employed by said company during such period, would amount to $944,997.65. Deponent also ascertained that the proportion of taxes on the company's property in the City of Detroit for the period named, January 1st to July 1st, 1918, amounts to $276,772.84, and that a proper depreciation charge relating to the company's property for such period of six months would amount to $249,230.92. In connection with his statement with reference to the item of depreciation, deponent states that Messrs. Barclay Parsons & Klapp, Engineers, of the City of New York, were employed by the Street Railway

Commission of the City of Detroit by authority of the Mayor and Common Council of the City of Detroit to make an investigation with reference to the operating, maintenance and depreciation expense of the company, and from their report to the Board of Street Railway Commissioners of the City of Detroit, it appears that their estimate of the proper charge for depreciation per annum was $520,000.

That based upon the actual expenses of operation of the company's railway system within the said one-fare zone during the period from January 1st to July 1st, 1918, applying the increase in wages allowed by said War Labor Board for such period, the following would be a correct statement of the financial results of the Company's operation for such period, without taking into account any return upon the Company's investment in the property of the Company connected with the operation of its street railway system in the City of Detroit.

| | | |
|---|---|---|
| Gross receipts | | $6,240,252.96 |
| Operating expenses as per books | $4,725,678.72 | |
| Taxes | 276,772.84 | |
| Increase in payrolls necessary to give effect to the award of the War Labor Board, together with the proportionate increase to employees in other departments | 944,997.65 | |
| Depreciation | 249,230.92 | |
| Balance | | $ 43,570.83 |

That said calculation was based upon the actual number of passengers carried by the plaintiff company on its street

railway system within the one-fare zone during such period January 1st to July 1st, 1918.

That deponent has made an investigation and calculation as to the effect upon such revenue and operating expenses of applying the provisions of the so-called Kronk Ordinance, adopted by the Common Council of the City of Detroit, August 9, 1918, a copy of which is attached to plaintiff's bill filed herein, marked "Exhibit X," and finds that by applying the provisions of said Kronk ordinance to the revenue of the Company, based upon the actual number of passengers carried by the company within said district for such period of six months, the item of gross revenue would be decreased from $6,240,252.96 to $5,545,344.03. The operating expenses of the Company during the same period would have been $4,763,738.99 instead of $4,725,678.72. The proportion of taxes would have been $276,772.84; increase in labor cost $952,608.59; depreciation, $251,907.12.

That the following is a correct statement of the financial results that would have attended the operation of said railway, based upon actual business of the plaintiff company for said period of six months, had the provision of the said Kronk ordinance been enforced during such period of six months, without taking into account any return upon the company's investment in the property of the company, used in the operation of its street railway system within the City of Detroit.

| | | |
|---|---|---|
| Gross revenue | | $5,545,344.03 |
| Operating expenses | $4,763,738.99 | |
| Taxes | 276,772.84 | |
| Increase in labor cost | 952,608.59 | |
| Depreciation | 251,907.12 | 6,245,027.54 |
| Deficit | | $ 699,683.51 |

That based upon the valuation of the company's property, as per affidavit of Robert B. Rifenberick, of $33,370,335, computing a fair return thereon at six per cent, the total deficit in gross revenues compared with gross expenditures as aforesaid, adding six per cent upon said $33,370,335 for a period of six months, would be upwards of $1,500,000, or in excess of $3,000,000 per annum.

That deponent has made a special investigation of the books and records of said plaintiff company to ascertain what the financial results to said company would have been during the same period between January 1st and July 1st, 1918, and upon the same business, the actual number of passengers carried, etc., had the rates of fare established by the plaintiff company on August 7, 1918, namely, a cash fare of 6 cents or ten tickets for 55 cents and universal transfers, been in effect, and finds from such investigation, and states the fact to be, that the gross operating revenue of said Company from its street railway system within the City of Detroit for such period would have amounted to $7,066,979.96 and the gross operating expenses on the same basis as hereinbefore indicated, with reference to the other computations above herein outlined, would have been $6,196,680.13, giving a surplus of $869,299.83 to apply toward provision for a reasonable return of six per cent on the value of the street railway company's property employed in conducting its business within the so-called one-fare zone.

The foregoing statement as to gross revenue is based on the reasonable assumption that 10 per cent of the passengers carried on plaintiff company's lines during such period would pay a cash fare of six cents, and 90 per cent thereof would purchase ten tickets for 55 cents.

That the following is a correct statement of the financial results that would have attended the operation of said railway company's business for said period of six months, had the rates of fare established by the company August 7, 1918, to-wit, a cash fare of 6 cents or ten tickets for 55 cents with universal transfers, been in effect, without taking into account any return upon the company's investment on its property used in the operation of its street railway system within the City of Detroit.

| | | |
|---|---|---|
| Gross revenue, | | $7,066,979.96 |
| Operating expenses | $4,725,678.72 | |
| Taxes, | 276,772.84 | |
| Increase in payroll, necessary to give effect to award of War Labor Board, together with proportionate increase to employees in other Departments, | 944,997.65 | |
| Depreciation, | 249,230.92 | 6,196,680.13 |
| Leaves, | | $ 870,299.83 |

Surplus of earnings over expenses to apply towards payment of interest on investment.

Deponent has carefully examined the financial report of Barclay Parsons & Klapp, made for the street railway commission of the City of Detroit, by authority of the Mayor and Common Council and that in and by said report the said Barclay Parsons & Klapp, after making a complete and full survey of the situation, and having had, to deponent's knowledge, full and complete access to all books and records of the plaintiff company for investigation over a period of several months, reported as a reasonable schedule of fares for application to all of the lines of the plaintiff company within the one-fare zone

of the City of Detroit, six tickets for 25c, good over any such lines of the plaintiff's system, without a transfer, or 5c cash fare with a transfer.

That said Barclay Parsons & Klapp's report was based on the assumed volume of traffic of 280,000,000 passengers per year, which was 140,000,000 for the first six months of the year 1918, which estimate of 140,000,000 passengers for the six months, January 1st, to July 1st, 1918, was about 17,000,000 less passengers than were carried by the plaintiff company over its system for a year in the same period of 1917. That in fact, the actual numbers of passengers carried over said system for the first six months of the year 1918, January 1st to July 1st, was 132,000,000 or 8,000,000 passengers less than was assumed by said Barclay Parsons & Klapp in their report would be carried, representing a loss in income estimated by their report of upwards of $350,000 for such six months' period. That since the investigation so made by Barclay Parsons & Klapp, and since their report was made, the award of the United States War Labor Board increasing the wages of plaintiff company's employees to an amount approximating $950,000 for such six months, has been made, and this additional burden imposed upon the plaintiff company as well as other large increases for other costs, material and so forth.

That he has made an investigation of the books and records of the plaintiff company with a view to segregating the items of "income" and "expense" of the plaintiff company as between its so-called five-cent lines and three-cent lines.

That so far as the question of income is concerned there was and is no difficulty in ascertaining the exact income derived from the operation of the five-cent lines and three-cent lines by reason of the fact that the daily receipts and

income from each of the lines making up the system of the plaintiff company throughout the City of Detroit are kept and recorded separately.

That in the matter of the distribution of operating expenses, there is no data from which an exact apportionment as between the five-cent and three-cent lines of plaintiff company can be made; but there are complete records in the office of the plaintiff company showing the number of miles that each of plaintiff company's cars on its various lines of street railway—both the five-cent lines and the three-cent lines—are operated each day, and inasmuch as the same rates of wages, cost of power and other elements of expense entering into the operation of the different lines of the plaintiff company's system are the same upon all of its lines, a distribution as between the said five-cent lines and the three-cent lines upon the basis of the car mileage of cars operated respectively over the five-cent lines and three-cent lines affords a substantially accurate basis for the distribution of such operating expenses, and in the table hereinafter referred to the so-called car mileage basis has been used in apportioning the operating expenses as between such lines.

That, from the examination so made, deponent has ascertained and states the fact to be that of the $6,240,252.96 gross revenue of the company from the operation of its lines of street railway in the City of Detroit for the six months January 1 to July 1, 1918, $5,035,231.36 represents the earnings upon the so-called five-cent lines and $1,205,021.60 represents the earnings of the company upon the thee-cent lines.

That the apportionment of the items of taxes and depreciation hereinafter referred to as between such five-cent lines and three-cent lines is made upon the basis of the relative values of the property connected with the ope-

ration of the five-cent lines and that used in connection with the operation of the three-cent lines, as fixed by Barclay Parsons & Klapp in their report of April, 1918.

That there is kept in the office of the plaintiff company a complete record of the hours that each and all cars are in service on each line of the plaintiff company's system of railway, and the distribution of the increase in pay-rolls hereinafter referred to is made upon the basis of the record of the actual hours the cars were in service, and, necessarily, the hours in which employes were in service, on each of such lines of railway.

As to the item of taxes, inasmuch as no net revenue accrued from the operation of the three-cent lines, all of the income tax was apportioned to the five-cent lines.

That, on the basis stated, the proper apportionment of the item of $944,997.65 increase in pay rolls as between such five-cent lines and three-cent lines is $723,962.70 to the five-cent lines and $221,034.95 to the three-cent lines.

That on such basis the item for depreciation—$249,-230.92— is properly apportioned between the five-cent and the three-cent lines as follows: $201,400.27 to the five-cent lines and $47,830.65 to the three-cent lines.

That on the basis stated the proper apportionment of the item of $276,772.84 for taxes, as between the five-cent lines and the three-cent lines, is $235,683.65 to the five-cent lines and $41,089.19 to the three-cent lines.

That during the period between January 1 and July 1, 1918, the rates of fare in force on the so-called five-cent lines was a five-cent cash fare in connection with the sale of eight so-called workingmen's tickets for twenty-five cents, good for an hour and a half in the morning and an hour in the evening, and on the so-called three-cent lines the fare in force was eight tickets for twenty-five cents throughout the day up to eight P. M. and six tickets for

twenty-five cents thereafter, or a cash fare of five cents, with the right of transfer to the five cent lines on payment of the five-cent cash fare.

That the following is a correct statement or schedule of the gross revenue, gross operating expenses, taxes, increase in pay-rolls, depreciation, etc., on all of the lines of the plaintiff's system in the one-fare zone of the City of Detroit between January 1 and July 1, 1918, and of the distribution of gross revenue, operating expenses, taxes, increase in pay-rolls and depreciation as between the five-cent lines and the three-cent lines on the basis herein outlined. Such statement also shows the balance of income or deficit in income over expenses, without making any provision for the payment of interest upon the value of the property employed in rendering the service.

| Particulars | Total | Five-Cent Lines | Three-Cent Lines |
|---|---|---|---|
| Gross Revenue.. | $6,240,252.96 | $5,035,231.36 | $1,205,021.60 |
| Deduct: | | | |
| Operating Expenses .... | 4,725,678.72 | 3,630.567.37 | 1,095,111.35 |
| Taxes ..... | 276,772.84 | 235,683.65 | 41,089.19 |
| Together ... | $5,002,451.56 | $3,866,251.02 | $1,136,200.54 |
| Balance of Revenues after deducting Operating Expenses and Taxes..... | 1,237,801.40 | 1,168,980.34 | 68,821.06 |

| | | | |
|---|---|---|---|
| Deduct: | | | |
| Increase in Pay-Rolls, as estimated ... | 944,997.65 | 723,962.70 | 221,034.95 |
| Depreciation | 249,230.92 | 201,400.27 | 47,830.65 |
| Together ..... | $1,194,228.57 | $ 925,362.97 | $ 268,865.60 |
| Balance —Income or Deficit from operation before providing any return on the Investment ..... | $ 43,572.83 | $ 243,617.37 | $ 200,044.54 |

That column one of the following schedule is a correct statement of the revenue collected, operating expenses, taxes, increase in pay-roll, depreciation and balance remaining above operating expenses on the basis of fares in force by the Company on its so-called five-cent lines during the period between January 1 and July 1, 1918, and column two thereof is a correct statement of what the results would have been on the actual business of the company during the same period had a straight five-cent fare been in force during such period:

| Particulars | Based on Fares Collected | Based on Five-Cent Fares |
|---|---|---|
| Gross Revenue ..... | $5,035,231.36 | $5,297,803.83 |
| Deduct: | | |
| Operating Expenses .... | $3,630,567.37 | 3,630,567.37 |
| Taxes ..... | 235,683.65 | 235,683.65 |
| Together ..... | $3,866,251.02 | $3,866,251.02 |

| | | |
|---|---|---|
| Balance of Revenues after deducting Operating Expenses and Taxes..... | 1,168,980.34 | 1,431,552.81 |
| Deduct: | | |
| Increase in Pay Rolls, as estimated ..... | 723,962.70 | 723,962.70 |
| Depreciation ..... | 201,400.27 | 201,400.27 |
| Together .....$ | 925,362.97 | $ 925,362.97 |
| Balance, representing Income from Operation before providing for any returns on the Investment .....$ | 243,617.37 | $ 506,189.84 |

That, had a five-cent cash fare been in force during the period referred to—January 1 to July 1, 1918,—there would have remained of the earnings of the plaintiff company's five-cent lines, above operating expenses, taxes, increase in pay rolls and depreciation, $506,189.84, without making any allowance for the payment of interest on the value of the plaintiff's property employed in the operation of its five-cent lines; while on the basis of $25,000,000 as a fair value of the plaintiff's property so employed in connection with the operation of its five-cent lines, the sum of $750,000, for a period of six months, should have been available, instead of $506,189.84.

That the following is a correct statement or schedule of the revenue that would have been collected, operating expenses, taxes and increases in pay-rolls paid, depreciation allowance, balance and deficit in revenue, had the provisions of the so-called Kronk Ordinance been in force on the five-cent lines between January 1 and July 1, 1918,

based upon the actual business of the company, expenses, etc., paid on the basis of the distribution hereinbefore made:

| Particulars | | Amt. |
|---|---|---|
| Gross Revenues ..... | | $4,435,117.17 |
| Deduct: | | |
| Operating Expenses .... | $3,659,583.00 | |
| Taxes ..... | 235,683.65 | |
| Increase in Pay-Rolls... | 729,764.98 | |
| Depreciation ..... | 203,440.50 | 4,828,472.13 |
| Deficit from operation before making any provision for return on the investment ..... | | $ 393,354.96 |

That had said Kronk ordinance been in force during the period referred to—January 1 to July 1, 1918, there would have been a deficit in the earnings of the plaintiff company, as compared with its expenses, resulting from the operation of its five-cent lines, etc., amounting to $393,-354.96, without making any provision for the payment of interest on the value of the property employed in rendering such service.

WILLIAM D. BONTHRON.

Subscribed and sworn to before me this 4th day of October, A. D. 1918.

CLARENCE B. ZEWADSKI,
*Notary Public, Wayne County, Mich.*

My commission expires April 26, 1922.

THE SUPREME COURT OF THE UNITED STATES.

| | |
|---|---|
| DETROIT UNITED RAILWAY CO., a Michigan Corporation, Plaintiff and Appellee, vs. CITY OF DETROIT, a Municipal Corporation, Defendant and Appellee. | No. 666. |

EASTERN DISTRICT OF MICHIGAN, WAYNE COUNTY, ss:

ROBERT B. RIFENBERICK, being duly sworn, says:

That he is Consulting Engineer of the Detroit United Railway, defendant in the above entitled cause, and is and has been for ten years last past; that he has had and now has special charge and direction of the supervision of the inventories of the Company's property, the additions thereto and the value of the same.

That in the year 1914, by direction of the Michigan Railroad Commission, Professor M. E. Cooley, Dean of the School of Engineering of the Michigan University, for the purpose of said Commission, entered upon the work of making a complete and detailed inventory of the property of the Detroit United Railway situate within the States of Michigan and Ohio and in connection therewith made an appraisal of the value thereof.

That included in such inventory and appraisal was the property of the Detroit United Railway within the then so-called one-fare zone district of the City of Detroit; that such inventory and appraisal included only the physical property of the Company.

That the aggregate of the valuation of Professor Cooley of such property within such one-fare zone district of the City of Detroit, was on the basis of its reproduction value, $26,563,435, and upon such basis, less depreciation, $23,609,765. Such appraisal was made as of January 1st, 1915.

That since such appraisal was made and completed by Professor Cooley, the territorial limits of the City of Detroit have been extended and deponent has ascertained the value of the property of said railway system between the limits, the so-called one-fare zone district, and the present limits of the City of Detroit, and finds and states the fact to be that the reproduction value is $568,795, and such cost, less depreciation, $511,637.

That since January 1, 1915, and down to July 1, 1918, there has been expended by the plaintiff Company, in additions, extensions and betterments to its property, within said limits, $6,238,105.00 on the basis of its reproduction value of such improvements, extensions and betterments, and such value, less depreciation, as of July 1, 1915, $5,592,867.

That on account of such increased investments for betterments, extensions and additions, additional material and supplies would be required to the amount of $212,309, and additional working capital to the amount of $50,789, making a grand total in value of the property constituting its railway system within the present City Limits of Detroit, of $33,633,433, without depreciation, and with depreciation deduction, $29,977,367.

Attached hereto and made part hereof and marked Exhibit "A" is a schedule showing the items making up the inventory and appraisal so made by Professor Cooley, as of January 1, 1915; and attached hereto and marked Exhibit "B" is a schedule showing the additions thereto for the purposes above herein outlined.

That deponent has examined carefully the report of Messrs. Barclay Parsons & Klapp, made for the Street Railway Commission of the City of Detroit, by authority of its Mayor and Common Council, embracing the property of the plaintiff Company within the one-fare zone district of the City of Detroit. That the appraised value of such property fixed by said Barclay Parsons & Klapp, as of January 1, 1918, based upon the cost of reproduction, was $33,019,225—present value (after deduction for depreciation) $28,727,297.

That on account of the extensions of the limits of the City of Detroit since the report of Barclay, Parsons & Klapp, property in addition to that inventoried and appraised by said Barclay Parsons & Klapp between the then limits of the one-fare zone district in the City of Detroit and the present territorial limits of the City of Detroit, is now included within the limits of the City of Detroit and the value of such property (reproduction cost) is $378,886, and the value, less depreciation, $342,253.

That there were expenditures made for additions, betterments and extensions to the property of the Company since the report of Barclay Parsons & Klapp to January 1, 1918, amounting to $436,734.00 (reproduction cost), and such value, less depreciation, $436,610.

That additional material, supplies and working capital required on account of such additions, betterments and extensions, amounted to $16,583.00, making a total appraised value of the physical property of the Company within the present city limits of Detroit, $33,851,428, cost of reproduction, and $29,522.743, with depreciation deducted.

That attached hereto made part hereof and marked Exhibit "C" is a schedule showing the items or property of

the plaintiff Company embraced in the inventory and appraisal of said Barclay Parsons & Klapp; and also attached hereto and marked Exhibit "D" is a schedule showing the additions to the inventory and appraisal of said Barclay Parsons & Klapp.

That under the direction of deponent, the plaintiff Company caused an inventory and appraisal to be made of its property in the one-fare zone of the City of Detroit, as of November 1, 1913, and that the appraisal of the property so inventoried under deponent's direction, which deponent believes to be a fair value of the same, amounts to $32,028,982,—since which time many millions of dollars have been expended in additions, betterments and extensions of said property.

That the value of the property of the Detroit United Railway connected with the operation of its so-called five cent lines within the City of Detroit as of July 1st, 1918, is Twenty-four million, forty-five thousand seven hundred ninety-eight dollars ($24,045,798.)

That the basis upon which such result is reached is as follows:

| | |
|---|---|
| Value fixed by Barclay Parsons and Klapp as of January 1, 1918 | $23,250,352.00 |
| Property not included in such report as shown by Exhibit D attached hereto | 342,253.00 |
| Amount of expenditures on additions, extensions, etc | 453,193.00 |
| | $24,045,798.00 |

That substantially all of the expenditures made by the plaintiff company between January 1st and July 1st, 1918, as shown in said Exhibit "D" were made in connection with the so-called five-cent lines.

That deponent is familiar with the recommendations made by Barclay Parsons & Klapp with reference to the rerouting of the operation of the cars of the plaintiff company over its various lines in the City of Detroit. That after the adoption of the resolution of the Common Council November 23, 1916, putting such recommendation into effect, the plaintiff company proceeded to carry out the recommendations so far as approved by such resolution of the Common Council and in connection therewith expended in changes and reconstruction of tracks, construction of curves, turnouts, etc., an amount approximating Four hundred thousand dollars ($400,000).

ROBT. B. RIFENBERICK.

Subscribed and sworn to before me this 4th day of October, A. D. 1918.

Jane Atkinson,
*Notary Public, Wayne County, Mich.*

My commission expires Sept. 3, 1921.

## EXHIBIT "A"

### PROFESSOR COOLEY'S APPRAISAL AS OF JANUARY 1, 1915

| I. C. C. Acct. No. | Schedule | Cost of Reproduction New | Cost of Reproduction Less Depreciation |
|---|---|---|---|
| | I.—WAY AND STRUCTURES: | $ | $ |
| 501 | Eng. and Sup. (See 501A, 501B and 501C below) | | |
| 502 | Right of Way | $ 71,980 | $ 71,980 |
| 503 | Other Land used in Elec. Ry. Operations | 1,873,538 | 1,870,513 |
| 504 | Grading | 1,044,218 | 1,044,218 |
| 505 | Ballast | 827,485 | 827,485 |
| 506 | Ties | 427,867 | 329,470 |
| 507 | Rails, Rail Fastenings and Joints | 1,409,619 | 1,127,549 |
| 508 | Special Work | 629,998 | 495,991 |
| 509 | Underground Construction | ..... | ..... |
| 510 | Track and Roadway Labor | 1,215,051 | 1,215,051 |
| 511 | Paving | 1,993,112 | 1,541,265 |
| 512 | Roadway Machinery and Tools | 24,913 | 19,986 |
| 513 | Tunnels and Subways | ..... | ..... |
| 514 | Elevated Structures and Foundations | ..... | ..... |
| 515 | Bridges, Trestles and Culverts | 19,424 | 16,511 |
| 516 | Crossings, Fences and Signs | 60,232 | 58,983 |
| 517 | Signals and Interlocking Apparatus | 55,507 | 51,336 |
| 518 | Telephone and Telegraph Lines | 13,037 | 11,447 |
| 519 | Poles and Fixtures | 320,851 | 284,864 |
| 520 | Underground Conduits | 290 | 296 |
| 521 | Distribution System | 1,095,166 | 1,025,395 |
| 522 | General Office Buildings | 305,099 | 224,565 |
| 523 | Shops and Car Houses | 1,410,354 | 1,195,390 |
| 524 | Stations, Misc. Bldgs. and Structures | 85,522 | 63,467 |
| 525 | Wharves and Docks | 31,239 | 28,116 |
| 526 | Park and Resort Property | ..... | ..... |
| 527 | Cost of Road Purchased | ..... | ..... |
| 528 | Reconstruction of Road Purchased | ..... | ..... |
| 529 | Other Expenditures—Way and Structures | ..... | ..... |
| | Total—502 to 529 inclusive | 12,914,508 | 11,509,872 |
| 529A | Contingencies 7½% of item 504 to 529 inclusive | 822,674 | 717,553 |
| 501A | Engineering and Sup. on W. & S. 5% of item 504 to 529A inclusive | 589,583 | 589,583 |
| | Total Way and Structures | 14,326,765 | 12,817,008 |

| | | | |
|---|---|---|---|
| | II.—EQUIPMENT: | | |
| 530 | Passenger and Combination Cars | 3,255,681 | 2,636,862 |
| 531 | Freight, Express and Mail Cars | ..... | ..... |
| 532 | Service Equipment | 144,294 | 112,763 |
| 533 | Electric Equipment of Cars | 1,602,874 | 1,259,349 |
| 534 | Locomotives | ..... | ..... |
| 535 | Floating Equipment | ..... | ..... |
| 536 | Shop Equipment | 373,663 | 325,109 |
| 537 | Furniture | 49,219 | 39,376 |
| 538 | Miscellaneous Equipment | 73,999 | 54,233 |
| | Total 530 to 538 inclusive | 5,499,730 | 4,427,792 |
| 538A | Contingencies 3% of item 530 to 538 inclusive | 164,992 | 132,834 |
| 501B | Engineering and Sup. on Equip. 2% of item 530 to 538A inclusive | 113,294 | 113,294 |
| | Total Equipment | 5,778,016 | 4,673,920 |
| | III.—POWER: | | |
| 539 | Power Plant Buildings | 414,746 | 375,496 |
| 540 | Substation Buildings | 53,694 | 52,285 |
| 541 | Dams, Canals and Pipe Lines | ..... | ..... |
| 542 | Power Plant Equipment | 1,164,086 | 971,699 |
| 543 | Substation Equipment | 300,333 | 269,309 |
| 544 | Transmission System | 107,036 | 105,417 |
| | Total 539 to 544 inclusive | 2,039,895 | 1,774,206 |
| 544A | Contingencies 7½% of item 539 to 544 inclusive | 152,992 | 133,045 |
| 501C | Engineering and Sup. on Power 5% of item 539 to 544A inclusive | 109,644 | 109,644 |
| | Total Power | 2,302,531 | 2,016,915 |
| | IV.—GENERAL AND MISCELANEOUS: | | |
| 545 | Franchises | 112,942 | 112,942 |
| 546 | Law Expenditures | 103,215 | 103,215 |
| 547 | Interest during Construction | 2,032,963 | 2,032,963 |
| 548 | Injuries and Damages | ..... | ..... |
| 549 | Taxes | 225,885 | 225,885 |
| 550 | Miscellaneous | 516,074 | 516,074 |
| 404 | Miscellaneous Physical Property | 181,171 | 181,079 |
| | Total General and Miscellaneous | 3,172,250 | 3,172,158 |
| | Total Power | 2,302,531 | 2,016,915 |
| | Total Equipment | 5,778,016 | 4,673,920 |
| | Total Way and Structures | 14,326,765 | 12,817,008 |
| | Total | 25,579,562 | 22,680,001 |
| | Material and Supplies—Lotted and Unlotted Stock | 793,462 | 739,353 |
| | Working Capital—Cash and Current Assets—Est. | 189,511 | 189,511 |
| | Total Property in Railway Use | 26,562,535 | 23,608,865 |
| | Property not at present in use | 900 | 900 |
| | Grand Total—Physical Property within One Fare Zone | $25,563,435 | $23,609,765 |

COPY BOUND CLOSE

EXHIBIT "B"

FESSOR COOLEY'S APPRAISAL OF PHYSICAL PROPERTY WITHIN DETROIT CITY LIMITS BROUGHT DOWN TO JULY 1, 1918

| | Cost of Reproduction New | Cost of Reproduction Less Depreciation |
|---|---|---|
| essor Cooley's Appraisal of the Detroit One Fare Zone ysical Property, as of Jany. 1, 1915 | $26,563,435 | $23,609,765 |
| essor Cooley's Appraisal, as of Jany. 1, 1915, of Physical operty within the present City limits (July 1, 1918 not cluded in the above appraisal, viz:— | | |
| Michigan Avenue—from Addison Y to present city limits | $ 10,237 | $ 8,527 |
| Grand River Avenue—from Loop to present city limits | 89,670 | 79,806 |
| Woodward Avenue—from Palmer Park Loop to present city limits | 111,021 | 99,919 |
| North Detroit Line—from Railroad Crossing to end of line | 165,974 | 148,872 |
| Center Line—from Harper Avenue to present city limits | 53,362 | 44,504 |
| Harper Avenue—from St. Charles Avenue to Leesville | 11,192 | 9,419 |
| Gratiot Avenue—from 1260′ north of old city limits to present city limits | 127,339 | 120,590 |
| | 568,795 | 511,637 |
| | $27,132,230 | $24,121,402 |
| itions and Betterments to the above property since Pro- ssor Cooley's Appraisal of Jany. 1, 1915, viz:— | | |
| For the year 1915 | $ 922,045 | |
| For the year 1916 | 2,746,365 | |
| For the year 1917 | 2,134,090 | |
| For 6 months of 1918 | 435,605 | |
| | $ 6,238,105 | $ 5,592,867 |
| for Additional Material and Supplies, based on Professor ooley's allowance, to care for the additional property not cluded in Professor Cooley's appraisal | $ 212,309 | $ 212,309 |
| for Additional Working Capital, based on Professor ooley's allowance, to care for additional property not in- uded in Professor Cooley's appraisal | 50,789 | 50,789 |
| | $ 263,098 | $ 263,098 |
| Grand Total to July 1, 1918 | $33,633,433 | $29,977,367 |

IN CENTER

## EXHIBIT "C"

### BARCLAY PARSONS & KLAPP'S APPRAISAL, AS OF JANUARY 1, 1918
### DETROIT ONE FARE ZONE

| I. C. C. Acct. No. | Schedule | Cost of Reproduction New | Cost of Reproduction Less Depreciation |
|---|---|---|---|
| | I.—WAY AND STRUCTURES: | $ | $ |
| 501 | Eng. and Sup. (See 501A, 501B and 501C below) | $ 917,995 | $ 836,59 |
| 502 | Right of Way | 689,520 | 689,52 |
| 503 | Other Land used in Elec. Ry. Operations | 1,830,035 | 1,830,03 |
| 504 | Grading | 1,490,184 | 1,490,18 |
| 505 | Ballast | 1,307,477 | 1,179,21 |
| 506 | Ties | 546,881 | 468,97 |
| 507 | Rails, Rail Fastenings and Joints | 1,875,338 | 1,617,22 |
| 508 | Special Work | 978,436 | 780,54 |
| 509 | Underground Construction | ..... | ..... |
| 510 | Track and Roadway Labor | 1,409,174 | 1,236,78 |
| 511 | Paving | 2,329,436 | 1,669,31 |
| 512 | Roadway, Machinery and Tools | 86,532 | 78,55 |
| 513 | Tunnels and Subways | ..... | ..... |
| 514 | Elevated Structures and Foundations | ..... | ..... |
| 515 | Bridges, Trestles and Culverts | 20,144 | 15,24 |
| 516 | Crossings, Fences and Signs | 72,234 | 65,56 |
| 517 | Signals and Interlocking Apparatus | 56,180 | 39,32 |
| 518 | Telephone and Telegraph Lines | 11,747 | 9,40 |
| 519 | Poles and Fixtures | 394,835 | 302,33 |
| 520 | Underground Conduits | 311 | 27 |
| 521 | Distribution System | 1,323,282 | 1,285,44 |
| 522 | General Office Buildings | 430,910 | 410,82 |
| 523 | Shops and Car Houses | 2,185,959 | 1,708,30 |
| 524 | Stations, Misc. Bldgs. and Structures | 470,111 | 429,95 |
| 525 | Wharves and Docks | 37,695 | 33,92 |
| 526 | Park and Resort Property | ..... | ..... |
| 527 | Cost of Road Purchased | ..... | ..... |
| 528 | Reconstruction of Road Purchased | ..... | ..... |
| 529 | Other Expenditures—Way and Structures | 19,626 | 18,72 |
| | Total—502 to 529 inclusive | | |
| 529A | Contingencies 7½% of item 504 to 529 inclusive | | |
| 501A | Engineering and Sup. on W. & S. 5% of item 504 to 529A inclusive | | |
| | Total Way and Structures | $18,484,042 | $16,196,47 |

| | | | |
|---|---|---|---|
| II.—EQUIPMENT: | | | |
| 530 | Passenger and Combination Cars | $ 4,501,102 | $ 3,623,244 |
| 531 | Freight, Express and Mail Cars | 5,981 | 5,382 |
| 532 | Service Equipment | 177,784 | 137,868 |
| 533 | Electric Equipment of Cars | 2,095,486 | 1,683,915 |
| 534 | Locomotives | ..... | ..... |
| 535 | Floating Equipment | ..... | ..... |
| 536 | Shop Equipment | 487,393 | 436,490 |
| 537 | Furniture | 56,158 | 47,744 |
| 538 | Miscellaneous Equipment | 73,961 | 55,928 |
| | Total 530 to 538 inclusive | | |
| | Contingencies % of item to inclusive | | |
| 501B | Engineering and Sup. on Equip. % of item to inc | | |
| | Total Equipment | 7,397,865 | 5,990,571 |
| III.—POWER: | | | |
| 539 | Power Plant Buildings | 523,793 | 464,646 |
| 540 | Substation Buildings | 56,146 | 52,469 |
| 541 | Dams, Canals and Pipe Lines | ..... | ..... |
| 542 | Power Plant Equipment | 1,381,060 | 901,784 |
| 543 | Substation Equipment | 324,051 | 275,935 |
| 544 | Transmission System | 133,640 | 126,791 |
| | Total 539 to 544 inclusive | | |
| | Contingencies % of item to inclusive | | |
| 501C | Engineering and Sup. on Power % of item to inc. | | |
| | Total Power | 2,418,690 | 1,821,625 |
| IV.—GENERAL AND MISCELLANEOUS: | | | |
| 545 | Franchises | 113,500 | 113,500 |
| 546 | Law Expenditures | 27,138 | 27,138 |
| 547 | Interest during Construction | 2,188,325 | 2,188,325 |
| 548 | Injuries and Damages | 29,346 | 29,346 |
| 549 | Taxes | 469,152 | 469,152 |
| 550 | Miscellaneous | 485,469 | 485,469 |
| 404 | Miscellaneous Physical Property | 197,083 | 197,083 |
| | Total General and Miscellaneous | 3,510,013 | 3,510,013 |
| | Total Power | 2,418,690 | 1,821,625 |
| | Total Equipment | 7,397,865 | 5,990,571 |
| | Total Way and Structures | 18,484,042 | 16,196,473 |
| | Total | 31,810,610 | 27,518,682 |
| | Materials and Supplies | 935,965 | 935,965 |
| | Working Capital | 272,650 | 272,650 |
| | Total value D. U. R. Property in Detroit January 1, 1918 | 33,019,225 | 28,727,297 |

EXHIBIT "D"

BARCLAY PARSONS & KLAPP'S APPRAISAL ADDED TO INCLUDE PHYSICAL PROPERTY WITHIN PRESENT CITY LIMITS, AS OF JULY 1, 1918

| | Reproduction Cost | Present Value |
|---|---|---|
| Barclay Parsons & Klapp's Appraisal of the Detroit One Fare Zone Physical Property, as of January 1, 1918..... | $33,019,225 | $28,727,2 |
| Professor Cooley's Appraisal, as of January 1, 1915, of Physical Property within the present city limits, not included in the above appraisal, viz:— | | |
| Michigan Avenue, from Addison Y to present city limits ..... | 10,237 | 8,5 |
| Grand River Avenue, from Turner Y to present city limits ..... | 41,576 | 37,9 |
| Woodward Avenue, from Palmer Park Loop to present city limits..... | 111,021 | 90,9 |
| North Detroit Line, from Davison Road to end of line | 35,351 | 31,7 |
| Center Line, from Harper Avenue to present city limits ..... | 53,362 | 44,8 |
| Gratiot Avenue, from 1260' north of old city limits at Harper to present city limits..... | 127,339 | 120,5 |
| | 378,886 | 342,2 |
| | $33,398,111 | $29,069,5 |
| Additions and Betterments to Professor Cooley's Appraisal, above noted ..... | 1,129 | 1,0 |
| Additions and Betterments, 6 months of 1918..... | 435,605 | 435,6 |
| | 436,734 | 438,6 |
| Add for Additional Material and Supplies, based on Barclay Parsons & Klapp's allowance, to care for the additional property which was not included in the Barclay Parsons & Klapp Appraisal ..... | 12,840 | 12,8 |
| Additional for Working Capital to care for this additional property ..... | 3,743 | 3,7 |
| | 16,583 | 16,5 |
| Appraisal value of the Physical Property of the Detroit United Railway within the present city limits, as of July 1, 1918. | $33,851,428 | $29,522,7 |

# STATE OF MICHIGAN

# SUPREME COURT

DETROIT UNITED RAILWAY,
a Michigan Corporation,
Plaintiff and Appellant,
vs.
CITY OF DETROIT,
a Municipal Corporation,
Defendant and Appellee.

No. 666.

In the Eastern District for the State of Michigan, County of Wayne—ss.

FRANK W. BROOKS, being duly sworn, deposes and says that he is President of the Detroit United Railway, and that the expenditures made by said company since November 9th, 1909, for extensions, additions and betterments, due to resolutions adopted by the Common Council of the City of Detroit, of which the attached is a sample and a true copy, and is marked Exhibit "1", amount to the sum of $13,276.973.50, and that said expenditures were necessary for the proper operation and maintenance of said system, over franchise, as well as non-franchise lines, so called.

That of this sum $1,125,508 were expended in the construction and equipment of lines built upon a day-to-day agreement, a true copy of which and sample is hereto attached and marked Exhibit "1", and that all of said extensions were designed to be operated with, and are in fact used in connection with, the so-called non-franchise, as well as franchise, lines.

That said company, in the year 1917, began the erection of new freight and package depots in the City of Detroit, for the purpose of better serving the public, and for the more expeditious handling of the freight and package business of its interurban lines, both interstate and intrastate. That one of said depots is located on Fort Street West, between Fifteenth and Sixteenth Streets, in the City of Detroit, and the other on Chene Street, between Monroe Avenue and Macomb Street, in the City of Detroit, and that neither can serve its purpose without the use of nearly all of the alleged non-franchise lines, and neither can be reached except by using two alleged non-franchise lines, to-wit, Fort Street West and Chene Street lines. Knowing this, application was made to the Common Council of the City of Detroit, and its permission secured, to install the necessary tracks and curves to connect said depots with said non-franchise lines, and that to complete said freight depots, including the land and buildings, will require the expenditure of $872,825.76.

That said company has expended, to procure new power and new equipment for use over its system within said city, on franchise and on so-called non-franchise lines, to meet the necessities of the public and the repeated demands of the Common Council expressed in resolutions and service ordinances passed since November 9, 1909, the sum of $5,067,635.10.

That owing to the congestion in and about the center of the city, a plan for re-routing of cars was suggested in the fall of the year of 1916. Before carrying this into effect, the city engaged the services of a well-known firm of engineers, to-wit, Messrs. Barclay Parsons & Klapp, who, after an investigation, made certain recommendations. To carry out the recommendations of said firm of engineers, it was necessary for the said company to construct some new tracks and install many curves and connections and nearly all of these were made on so-called non-franchise lines, and the money expended to complete said work amounted to the sum of $157,749.64.

That since November 9, 1909, with the consent of the Common Council, there has been expended by said company for the reconstruction and the rebuilding of the so-called non-franchise lines, the sum of $2,039,345.

That various attempts have been made by said company and officials of the City of Detroit to adjust the differences between said company and said city. In the year 1909 a Citizens' Committee of Fifty was appointed, which met and considered the subject over a period of several months, and reported in full to the Common Council of said city. In the year 1912 an ordinance was submitted to the people for their approval, which had been prepared by certain city officials, after long and numerous conferences with the officers of said company. In the year 1913 a day-to-day agreement was proposed by the city and accepted by said company. In the year 1915, through articles of agreement between the Street Railway Commissioners of the City of Detroit and the said company, it was proposed to sell to the City of Detroit, the street railway system of said company within the city limits. Each and all of said proposals were made for the purpose of serving and continu-

ing to serve this community with its necessary transportation facilities, and this company has never been ordered, either by the Common Council or the people of the City of Detroit to discontinue its services on any of the so-called non-franchise lines.

FRANK W. BROOKS.

Subscribed and sworn to before me this 4th day of October, A. D. 1918.

JANE ATKINSON,
*Notary Public, Wayne County, Mich.*

My commision expires September 3, 1921.

## EXHIBIT 1.

Whereas, by the terms of a temporary arrangement between the City of Detroit and the Detroit United Railway made August, 1913, (J. C. C. 1913, pages 1125-1127), it was agreed among other things that the Detroit United Railway would construct the proposed Crosstown line on or near Junction Avenue in connection with existing tracks; also connect the Mack avenue and Myrtle street line as hereinbefore proposed; and extend the Kercheval avenue line easterly to St. Jean avenue, thence southerly to Jefferson Avenue; and also make the necessary extensions to the new Michigan Central Terminal station; all to be on streets and locations to be approved by the Common Council; and

Whereas, the extension to the Michigan Central terminal station has been constructed and the Common Council on September 30, 1913, (J. C. C. p. 1385) adopted a

resolution for the construction of Junction Avenue Line; and,

Whereas, the City of Detroit desires additional trackage to be constructed in connection with the Junction avenue line upon streets hereinafter named, in lieu of the Mack and Myrtle street line, and the Detroit United Railway is willing to construct said trackage under the conditions hereinafter stated; and,

Whereas, the said Common Council has determined upon and fixed the lines or streets upon which said Junction avenue line and said additional trackage shall be located and constructed, as follows:

(Here follows streets on which tracks were to be laid.)

Now, therefore, be it resolved, that consent, permission and authority is hereby granted to the Detroit United Railway to enter upon said above named streets and Avenues and construct thereon a street railroad, with all necessary side tracks, turnouts, switches, poles, wires and overhead power equipment, and connect the same and operate its cars on said streets and avenues in connection with those parts of its existing tracks above described, under the same terms and conditions under and by virtue of which it is operating that portion of its system constructed under authority of the said Hamilton Boulevard extension above referred to, except as otherwise provided in this resolution and in the agreement of August 7, 1913.

And be it further, Resolved, That the adoption and acceptance of this resolution shall release the Company from its obligation to construct the Mack avenue and Myrtle street line contained in the agreement of August 7, 1913, and will also be deemed a withdrawal of the Company's proposal to the Public Utilities Committee of the

Common Council of the City of Detroit to extend the Kercheval avenue line easterly of St. Jean avenue;

And be it further, Resolved, That the work herein authorized shall be started at once and pushed to completion without interruption: Provided, however, that any delay caused by court proceedings, the inability of the Company to obtain necessary funds for constructing the work, or other causes beyond the control of the Company, shall not be interruption within the meaning of the paragraph;

And be it further resolved and understood, That if the City of Detroit shall be lawfully authorized to engage in the ownership and operation of street railways and shall so engage in such ownership and operation and shall desire to operate a part of its system over said streets, it shall purchase the tracks and equipment constructed under this consent together with the equipment necessarily purchased and acquired by said Company for the operation of said cars over such additional tracks, and shall pay therefor a sum of money equal to the cost thereof less depreciation to be ascertained at the time of purchase thereof by the city, the sum to be agreed upon by the parties hereto, or if they should fail to agree, the said sum to be determined by a Board of Arbitration, one member of which shall be selected by the Company, another by the Mayor of the City of Detroit, and a third by the two thus chosen, and that the decision of said Board or a majority thereof shall be final: Provided, that the Board of Street Railway Commissioners of the City of Detroit or any member thereof shall have the supervision of the construction of said tracks and shall have free access to the books and vouchers of said company for the purpose of ascertaining the cost of said tracks and con-

struction, together with any information in whatever form it may be which said street railway company may have which shows the cost of such construction.

And be it further resolved and understood, That said Railway Company by its acceptance hereof gains no term rights in said streets by reason of installing the equipment herein permitted, and that the Council or the people of the City of Detroit at their pleasure or caprice may revoke the permit hereby granted, and said Company will forthwith remove from the streets the property permitted to be placed therein by it under this grant.

It is further understood and agreed between the said Company and the Common Council and the City of Detroit that the making of this grant and the acceptance thereof by said Company shall not be deemed to be a waiver of any of the rights of said City of Detroit, or of said Railway with reference to the construction, maintenance, and operation of any lines of railway or street railway tracks now owned, maintained, and operated in said city, and that each party hereby saves and reserves all of its rights whatever they may be, the same as though this grant had not been made or accepted.

And be it further resolved, That in connection with this permit the Company will put into effect rates of fare as provided in the resolution of August 7, 1913, as follows:

(1) Seven tickets for twenty-five cents (25c), each of which tickets shall be good for a ride for any distance in one direction over said tracks hereby authorized during 24 hours of the day;

(2) Upon the payment of the fare at the rate of seven tickets for twenty-five cents or five cent (5c) fare, a trans-

fer shall on demand be issued to any connecting or intersecting line according to the usual custom;

(3) The existing provision now in force on other lines for workingmen's tickets, so-called, eight for twenty-five cents, shall also be in force on this line;

(4) A single cash fare shall be five cents (5c) with all existing transfer privileges.

And be it further resolved, That the agreement of August 7, 1913, hereinbefore referred to, shall remain in full force and effect except as herein modified.

And be it further resolved that the resolution of September 30, 1913, (J. C. C. 1913, p. 1384) is here rescinded.

And be it further resolved, That this permit is void if not accepted within ten days after its approval by the Mayor.

THE SUPREME COURT OF THE UNITED STATES

| | |
|---|---|
| DETROIT UNITED RAILWAY CO., a Corporation, Plaintiff and Appellant, vs. CITY OF DETROIT, a Municipal Corporation, Defendant and Appellee. | No. 666. |

EASTERN DISTRICT OF MICHIGAN, COUNTY OF WAYNE, ss.

BERNARD F. WEADOCK, being duly sworn says:

That a reference to the proceedings of the City in connection with the so-called Citizens Committee referred to in the affidavit of Frank W. Brooks hereto attached will be found in the report of the opinion of the Justices of the Supreme Court for the State of Michigan in *Attorney General vs. Wayne Circuit Judge,* 157 Mich., p. 617, in which opinion a portion of the answer of the City of Detroit filed in that case was quoted as follows:

> "That the City of Detroit is a city covering many miles of territory with a population, to wit, 400,000 inhabitants (1909). That in the year 1862 certain rights were granted in the streets of the City of Detroit to certain gentlemen who afterwards organized the Detroit City Railway Company. That in the year 1879 these rights were extended for a period of 30 years. That these grants by the City of Detroit were made under the laws of the State

of Michigan. That on the 14th day of November, 1909, the period of extension granted in the year 1879 will have been completed. That for a number of years the street railway question has agitated the public mind, and has been the subject of discussion in political campaigns. That these defendants are informed and believe that the character of the population, the manner in which the city has been built, is such that street railway service is essential in order to accommodate the people from day to day. That it is necessary to take steps to continue the street car service. That the City of Detroit as a municipality is powerless to engage in this enterprise itself, and that it is incumbent upon the officers of the City of Detroit to make an investigation and ascertain, if possible, upon what terms and upon what conditions the City may continue to enjoy street railway facilities. And that the expenditure of money for this purpose is the expending of money for a public purpose."

That on August 2, 1915, a definite formal agreement was entered into by the City of Detroit and the Detroit United Railway for the purchase by the city of the property of the Railway Company at a price to be fixed by the judges of the Circuit Court for the County of Wayne, in which county Detroit is located.

That the negotiations in both of the instances referred to—the proceedings by the Citizens Committee appointed by the Mayor of the City of Detroit and under the contract referred to—failed, by reason of lack of power upon the part of the City to complete the purchase in the one instance, and in the other on account of the failure of the

electors of the City of Detroit to approve of the purchase by the City under the terms of said contract.

That still later, and during the present year the representatives of the City of Detroit again opened negotiations for the purchase of the property of the Railway Company; that on July 3, 1918, the Corporation Counsel of the City of Detroit on behalf of the City addressed a communication, of which the following is a copy, to the President of the Detroit United Railway, and the following reply was made thereto:

"CITY OF DETROIT

Office of the Corporation Counsel.

July 3, 1918.

Mr. Frank W. Brooks, President,
Detroit United Railway,
Jefferson and Bates Streets,
City.
Dear Sir:—

At the direction of the Street Railway Commission of the City I am suggesting to you the advisability of the officers of your Company and the Commission opening negotiations looking to the purchase by the City of your Company.

You are therefore invited to be present at a first preliminary meeting to be held in the Mayor's office, Tuesday evening, July 9, 1918, at 8:00 o'clock.

I would be glad to hear from you as early as possible whether you will attend such a meeting.

Yours truly,
(Sgd.) DIVIE B. DUFFIELD,
Corporation Counsel."

"July 5th, 1918.

Mr. Divie B. Duffield,
Corporation Counsel,
Detroit, Michigan.
Dear Sir:—

As requested in your favor of the 3rd inst., I will arrange to attend the meeting to be held on the evening of the 9th inst.

Yours very truly,
(Sgd.) F. W. BROOKS,
President."

Such negotiations were pending at the time of the enactment of the Ordinance, Exhibit "X" attached to the plaintiff's original Bill of Complaint filed in the above matter. That a specific instance of the many ways in which the City recognized the necessity of the plaintiff continuing the operation of its street railway system is a resolution adopted by the Common Council of the City of Detroit at its regular meeting, December 18, 1917, of which resolu- the following is a copy:

"By Ald. Dill:

Resolved, That the Detroit United Railway be and is hereby directed to cause all its cars on all lines to have same plainly placarded with signs indicative of the route that each car is to follow, and in designating the routing of said cars, that the sign attached be carried from start to terminus without substitution, so that the traveling public shall not be subjected to all the annoyance and discomfort of being forced to disembark at intersecting lines, switches and turnouts to accommodate the Detroit United Railway's traffic conditions regardless of what may happen to patrons.

Adopted.

TWENTY-FIRST WARD."

That the City of Detroit has never at any time indicated its desire to have the Railway Company discontinue its service; on the contrary has always recognized the necessity of the continuance of such service, and its Common Council adopted many times each year for many years past resolutions regulating and directing the operation of said Street Railway System, and notwithstanding the fact that in the year 1913 courts had determined that the City had the right to oust the plaintiff company from Fort Street in said City and placed under the control of said City a Court's Writ of Assistance to that end, in view of the recognized necessity of the continuance of the operation of such railway in the interest of the public, the City has failed for more than five years to exercise its power in that respect.

That as recommended in the report of Barclay Parsons & Klapp, the Common Council of the City of Detroit by resolution adopted at its meeting held November 23, 1916, gave the Railway Company specific directions with reference to re-routing and operating its cars on its several lines in the City of Detroit. Copy of such re-routing resolution is attached hereto and marked Exhibit 2, and the Company was compelled to expend and did expend upwards of Four Hundred Thousand ($400,000) Dollars in changing its tracks, reconstruction of tracks, curves and turn outs in order to put such re-routing plan in operation.

That plaintiff's Bill of Complaint was filed with the Clerk of said Court on August 12th, 1918, and upon the same being filed, Honorable Arthur J. Tuttle, Judge of the

District Court, fixed the opening of Court on the morning of August 13, 1918, for the hearing of plaintiff's application for a temporary injunction and directed that notice of such hearing at such time be given to the Corporation Counsel of the City of Detroit, Mr. Allan H. Frazer.

That at the time fixed on the morning of August 13, 1918, plaintiff appeared by its counsel and the defendant by Corporation Counsel and Mr. Richard I. Lawson, and plaintiff's counsel presented to said Court its bill of complaint and argued in support of its application for injunction. Thereupon, the Court, without hearing any further argument in the matter, announced that he would refuse plaintiff's application for an injunction and dismiss its bill of complaint.

That deponent was present at the hearing before Judge Tuttle of the plaintiff's application for a Temporary Injunction on August 13, 1918; that no stenographer was in attendance; that representatives of various newspapers of Detroit were in attendance, and made very full notes of the opinion announced by Judge Tuttle at such time, among others the representative of the "Detroit Journal." That attached hereto and marked Exhibit 3 is a report made by such reporter of the "Detroit Journal" and published on the afternoon of August 13th in the several issues of that paper; that the portions of said report quoted are a substantially accurate report of the opinion announced at the time Judge Tuttle disposed of plaintiff's application for such injunction.

That immediately thereafter, counsel for the plaintiff prepared a decree in accordance with the decision announced by Judge Tuttle, a claim for an appeal to the Supreme Court of the United States, a bond on appeal, assignments of error, and a citation, and between two and

three o'clock in the afternoon of August 13, deponent, with Elliott G. Stevenson, one of the counsel for the plaintiff, called on Judge Tuttle in the Federal Building, Detroit, and presented papers referred to him for his signature.

That upon such presentation, Judge Tuttle said that the papers were satisfactory, but that he desired before signing and filing them to prepare a brief opinion to file in the cause, and some time thereafter Judge Tuttle did file in said cause an opinion, a copy of which is attached to the defendant's Answer to plaintiff's Petition filed herein.

That attached hereto and marked Exhibit 4 is a copy of the Injunction issued out of the Circuit Court for the County of Wayne, in Chancery, on the filing of the bill of complaint filed by the City of Detroit in that court served upon the plaintiff Company on August 13, 1918, being Exhibit "B" attached to plaintiff's petition herein.

That the letter of the President of the Plaintiff Company to the Common Council, copy of which was presented to the Common Council and considered by it at its meeting of August 7, 1918, is attached hereto and marked Exhibit "5"; together with resolution adopted by the Common Council aforesaid at the same meeting at which said letter was presented and heard August 7, 1918.

BERNARD F. WEADOCK.

Subscribed and sworn to before me this 4th day of October, A. D. 1918.

WARREN E. TALCOTT,
*Notary Public, Wayne County, Michigan.*
My commission expires August 13, 1921.
(SEAL)

EXHIBIT "2."

**Resolution of City of Detroit.**
**Authorizing Re-routing to Relieve Congestion.**
**November 21st, 1916.**

## SPECIAL COMMITTEE

*To the Honorable the Common Council:*

Gentlemen—To your Committee on Public Utilities and Traffic and Police Regulation, to whom was referred back the resolution of Alderman Vernor relative to the construction of certain tracks, loops, curves, cross-overs, etc., by the Detroit United Railway, respectfully report that we have again considered the matter and have made some changes in the resolution and herewith submit the resolution as amended by this Committee and recommend its adoption.

Respectfully submitted,

JAMES VERNOR,
CHAS. W. BURTON,
MAURICE J. KEATING,
GODFREY FREIWALD,
CHARLES A. ASHE,
WM. F. ZOELLER,
JOHN C. BLEIL,
SHERMAN LITTLEFIELD,
WM. RICHERT,
JULIUS L. KRIMMEL,
W. H. C. HINDLE.

By Ald. Vernor:

Preamble.

*Whereas,* The Board of Street Railway Commissioners have recommended the construction of additional tracks and the installation of loops, curves, cross-overs, switches and straight tracks for the purpose of relieving congestion of street cars adjacent to the City Hall, and

Re-routing necessary to relieve congestion.

*Whereas,* said tracks and loops, curves, cross-overs, switches and straight track will in the opinion of this Council relieve such congestion:

Consent granted.

*Now, Therefore,* Be It Resolved, That consent, permission and authority is hereby granted to the Detroit United Railway to enter upon the following streets and avenues and construct thereon additional tracks, loops, curves, cross-overs, switches and straight tracks, poles, wires, and overhead power equipment, and connect the same and operate its cars on said streets and avenues in connection with its existing tracks, to-wit:

Single track connection over Gratiot with Brush.

A single track connection over Gratiot Avenue connecting Brush Street track north of Gratiot with Brush Street track south of Gratiot.

Clinton street connection with west-bound track on Gratiot.

A connection between the single track on Clinton street and the west bound track on Gratiot Avenue at Brush Street.

Brush street from switch point north of Macomb at Fort st.

A single straight track connection on Brush Street from the switch point north of Macomb street to a connection with the Brush Street track at Fort Street.

Macomb and Brush curve.

A single track connecting curve at the southeast corner of Macomb and Brush Streets.

N. W. corner Brush and Monroe ave.

A single track connecting curve at the northwest corner of Brush Street and Monroe Avenue.

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| Randolph to No. bound track No. of Monroe. | A straight track connection on Randolph Street from the single track south of Monroe to the north bound track north of Monroe. |
| Curve at S. E. corner Brush and Monroe. | A single track connecting curve at the southeast corner of Brush Street and Monroe Avenue. |
| Randolph and Bates. | A single track connecting curve at the northwest corner of Randolph and Bates Streets. |
| East side of Farmer. | A single track on the east side of Farmer from a point ten feet north of the north line of Bates Street to the south line of Gratiot Avenue and connecting curve from the above track east to the east bound track on Gratiot Avenue. |
| Reconstruction of Y at Farmer and Gratiot. | A reconstruction of the "Y" at Farmer and Gratiot, so that the west curve will connect to the east bound track on Gratiot and the east curve to the west bound track on Gratiot. |
| Reconstruction of curve, n. w. corner Monroe and Farmer. | A reconstruction of the curve at the northwest corner of Monroe and Farmer, so that the same will connect to the west bound track on Monroe. |
| West bound track on Monroe to Cadillac Square. | Straight track and curve connections from west bound track on Monroe, to connections with the existing tracks on both sides of Cadillac Square. |
| N. E. corner Congress and Bates. | A single track connecting curve at the northeast corner of Congress and Bates Streets, connecting the west bound tracks on Congress, with the single track on Bates Street. |
| Atwater and Bates. | A single track connecting curve at the northwest corner of Atwater and Bates Street. |
| N. W. corner Griswold and Fort. | A single track connecting curve at the northwest corner of Griswold and Fort Streets, connecting southbound track on Griswold with west bound track on Fort. |

A single track connecting curve at the northeast corner of Fort and Shelby Streets, connecting the west bound Fort Street track to the existing track on Shelby. — Fort and Shelby.

Reconstruction of the single track connecting curve at the southwest corner of Michigan Avenue and Shelby Street, so that the same will connect the Shelby Street track with the west bound track on Michigan Avenue. — Reconstruction S. W. corner Michigan and Shelby.

A single track connecting curve at the southwest corner of Shelby and State Streets. — S. W. corner Shelby and State.

A single track in Park Place, from State to Clifford, with connecting curve at the northeast corner of State and Park Place and connecting curve at Clifford Street to the west bound track on Clifford. — Park Place from State to Clifford.

A single track connecting curve at the northeast corner of Michigan and Cass Avenues, connecting the track on Cass to the east bound track on Michigan. — N. E. corner Michigan and Cass.

A straight track connection on Cass Avenue, connecting the track on Cass Avenue north of State Street, with the track on Cass Avenue south of State Street. — Cass avenue connecting track.

A single track curve from the west bound track on Jefferson Avenue, west to Second Avenue. — Jefferson avenue west to Second.

A single straight track on Second Avenue from Jefferson Avenue to Larned Street. — Second Avenue, Jefferson to Larned.

A single track curve from Second Avenue to connect with Larned Street west of Second Avenue. — Second Ave. to connect with Larned.

Two connecting curves from Larned Street east to Third to connect the double track on Third Street, one curve connecting to the north bound track on Third, north of Larned and the other connecting to the south bound track on Third Street, south of Larned. — From Larned St. east to Third.

Relating to Municipal Ownership.

And it is further resolved and understood, that if the City of Detroit shall be lawfully authorized to engage in the ownership and operation of street railways and shall so engage in such ownership and operation and shall desire to operate a part of its system over said streets, it shall purchase the tracks and equipment necessarily purchased and acquired by said company for the operation of said cars over such additional tracks, and shall pay therefor a sum of money equal to the cost thereof less depreciation to be ascertained at the time of purchase thereof by the city, the sum to be agreed upon by the parties hereto, or if they should fail to agree, the said sum to be determined by a Board of Arbitration, one member of which shall be selected by the Company, another by the Mayor of the City of Detroit, and the third by the two thus chosen, and that the decision of said Board or a majority thereof shall be final; provided that the Board of Street Railway Commissioners of the City of Detroit or any member thereof shall have the supervision of the construction of said tracks and shall have free access to the books and vouchers of said Company for the purpose of ascertaining the cost of said tracks and construction, together with any other information in whatever form it may be which said street railway company may have which shows the cost of such construction.

No term rights granted.

And be it further resolved and understood, that said Railway Company by its acceptance hereof gains no term rights in said streets by reason of installing the equipment herein permitted, and that the Council or the people of the City of Detroit at their pleasure or caprice may revoke the permit hereby granted, and said Company will forthwith remove from the streets the property permitted to be placed therein by it under this grant.

No previous rights waived.

It is further understood and agreed between the said Company and the Common Council and the City of Detroit, that the making of this grant and the acceptance thereof by said Company shall not be deemed to be a waiver of any of the rights of said City of Detroit, or of said Railway with reference to the construction, maintenance, and operation of any lines of railway or street railway tracks now owned, maintained, and operated in said city, and that each party hereby saves and reserves all of its rights whatever they may be, the same as though this grant had not been made or accepted.

Present rate of fare obtains on Sherman, Harper and Fourteenth lines.

It is further understood and agreed that upon the Sherman, Harper and Fourteenth lines the present rate of fare operative on said lines, with transfer privileges, shall be continued in effect even though said cars operate on the tracks of the so-called five-cent lines, and it is also understood and agreed that upon all other lines, the present rates of fare and transfer privileges shall continue in effect.

Common Council reserves right to continue or change the routing or operating of cars.

It is further resolved and understood, that the Common Council reserves the right to either continue the routes as now established or to make such changes in the routing and operating of said cars as in its judgment may be deemed necessary, no routing or operating of cars as at present routed or operated, shall be changed without the consent of the Common Council being first obtained therefor.

Agreement of Aug. 7, 1913, to remain in force.

And be it further resolved, that the agreement of August 7, 1913, hereinbefore referred to, shall remain in full force and effect except as herein modified.

Acceptance.

And be it further resolved, that this permit is void if not accepted within ten days after its approval by the Mayor.

Ald. Vernor moved the adoption of the resolution and report, which motion prevailed as follows:

Yeas—Ald. Allan, Ashe, Barnett, Bleil, Burton, Cranshaw, Dill, Ellis, Field, Friewald, Glinnan, Guthard, Hindle, Kocher, Krimmel, Kronk, Lempke, Littlefield, Lodge, Nowe, Richert, Robinson, Rollo, Rutter, Schultz, Starkey, Thompson, Vernor, Wartell, Wenzel, A. E. Wilson, W. J. Willson, Zink, Zoeller and the President Pro Tem—35.

Nays—Ald. Jakel and Schemansky—2.

STATE OF MICHIGAN, }
City of Detroit } ss.

CITY CLERK'S OFFICE, DETROIT.

I, RICHARD LINDSAY, City Clerk of the City of Detroit, in said State, do hereby certify that the annexed paper is a TRUE COPY OF A RESOLUTION adopted by the Common Council, at a session held on the 21st day of November, 1916, and approved by the Mayor on the 28th day of November, 1916, as appears from the Journal of said Common Council remaining in the office of the City Clerk of Detroit, aforesaid; that I have compared the same with the original, and the same is a correct transcript therefrom, and of the whole of such original.

*In Witness Whereof,* I have hereunto set my hand and affixed the corporate seal of said City, at Detroit, this 29th day of November, A. D. 1916.

RICHARD LINDSAY,
City Clerk.

## ACCEPTANCE

December 2nd, 1916.

*To the Honorable the Common Council,*
Detroit, Michigan.

Gentlemen:—

On behalf of the Detroit United Railway I hereby accept the resolution adopted November 21st, C. C. J. 1624, authorizing the construction of tracks to permit of rerouting.

Respectfully submitted,
(Signed) E. J. BURDICK,
Asst. Gen'l Mgr.

## EXHIBIT 3.

THE DETROIT JOURNAL—August 15, 1918.

### 5c FARE STANDS; TUTTLE THROWS OUT D. U. R. SUIT. RAPS COMPANY AND CITY.

The D. U. R.'s application for an injunction to prevent enforcement of the Kronk five-cent fare ordinance was roughly thrown out of court Tuesday morning, by Federal Judge Arthur J. Tuttle.

In doing so he delivered a torrent of scathing criticism and denunciation of both the D. U. R. and the city.

He called the controversy a "dirty mess" and said he would not act in it unless the government "compelled him to do so."

Judge Tuttle declared that he could find nothing in the law obliging him to take a hand in the quarrel.

He further declared that he hoped the President of the United States would step in, take both sides "by the nape of the neck and make them behave."

Judge Tuttle's action leaves the city in the saddle.

The Kronk ordinance went into effect at midnight, and at the same hour Circuit Judge Harry J. Dingeman granted the city an injunction restraining the D. U. R. from violating this ordinance. A violation would be contempt of court.

Judge Tuttle would not permit either of the City's legal representatives, Corporation Counsel Allan H. Frazer and former Corporation Counsel Richard I. Lawson, who acted as special counsel, to say a word in court. He ordered Mr.

Frazer to sit down when the latter arose to address the court.

The Judge said: "I don't want to hear from the city. The city has made enough noise, has been in the papers too much."

Mr. Frazer sat down, then got up again.

"Now, I mean that," the court said. "I don't want to hear a word from the city. Sit down," he ordered Mr. Frazer.

Immediately afterward Mr. Frazer and Mr. Lawson left the courtroom and did not hear the torrid denunciation of both sides.

Mayor Marx remained through it all.

Among other things, Judge Tuttle said the city was not capable of self-government. It was like a "baby crying in the night and when it is weaned, perhaps, it will be better able to take care of itself."

## ARGUES HALF HOUR.

The court's fiery remarks followed a recess after Elliott G. Stevenson, D. U. R. attorney, had argued for half an hour on the company's 200-page bill of complaint. Mr. Stevenson contended that the city's action was a violation of two provisions of the federal constitution—that it impaired contractural rights and resulted in taking of property without due process of law.

Attorney Stevenson contended that the city's action would deprive the D. U. R. of more than $3,000,000 of revenue each year, "when the increased wages alone amount to more than $2,000,000 a year." He said the politicians had incited rioting by Bolsheviki and I. W. W.'s "aided by the police."

The judge refused to entertain either contention. He said:

"There's no word in the ordinance which impairs the contracts. If the company wanted to make such poor bargains the federal court will not interfere, I'll not take a hand in the nasty mess.

"I'll not mix in this unless the law compels me to and I don't see where it does.

"The corporation has shown a lack of tact and the municipality a lack of ability for self-government. I'm not going to step into this matter when our country is busily engaged in its war program. Detroit has 100 per cent. patriotism, 100 per cent. intelligence, but it is like a baby crying in the night in its self-government. It has been brought up on a bottle. Maybe when it is weaned and gets substantial food it will develop an ability for self-government.

## PRESIDENT SHOULD ACT.

"The President of the United States has the power and the sooner the better it will be if he steps in. The city has been incompetent for years. It is in a situation where no official in one term can do anything.

"The only way to settle this is for the city and company to come to a reasonable agreement.

"Each has the other by the throat and it has been that way for years. Each is boasting, because it is true that each has the other by the throat, but what's the consolation? Each is being punished.

"If this is not stopped they ought to be treated like a man and a wife who quarrel so much that the neighborhood is aroused. A big policeman has to come in and take each by the neck and rap their heads together until they behave. The president of the United States ought to do this here.

"Perhaps in the end the city will find out that the D. U. R. is not so unfair in the matter of rates.

"The D. U. R. can refuse to operate its cars unless it gets what it wants. The city glories that it can put the D. U. R. off the streets, but who wants that?

## HITS HOT AIR POLITICIANS.

"This talk of hot-air politicians is nauseating. They make promises but they can't do a thing. The sooner the people learn this the better.

"There are only two ways out—an agreement with the D. U. R., a decent franchise for a decent period, or a purchase by the city of the lines at a fair price.

"But it has been useless to try these things. As soon as one politician gets started the others turn against him. If one says 'yes' the other says 'no.'

"Why can't you be decent enough to get the President to take it. It's a nasty mess.

"I not only deny the injunction, but I dismiss the bill. When my country wants me to get into this I will, and not before."

## DECRIES MORE RIOTING.

As the attorneys and others were leaving the courtroom, Judge Tuttle called out: "I hope I've said nothing that will cause any more rioting."

The D. U. R.'s representatives, crestfallen, hurried away.

Mayor Marx, the only city representative who stayed through the whole session, was smiling as he left.

"I've been trying for four years to do what the judge has recommended," he said. "I'm trying now to get into negotiations for a purchase of the lines and I've tried to get an agreement with the company. The Court's action is entirely satisfactory to me."

## EXHIBIT 4.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE, IN CHANCERY.

In the Name of the People of the State of Michigan:

To Detroit United Railway, and to its counselors, attorneys, solicitors and agents and each and every of them, *greeting*:

*Whereas*, it has been represented to us, in the Circuit Court for the County of Wayne, in Chancery, on the part of the City of Detroit, Plaintiff, that it has lately exhibited its bill of complaint against you the said Detroit United Railway, defendant, to be relieved, touching the matters therein complained of: in which bill it is stated amongst other things, that you are combining and confederating with other to injure the said plaintiff touching the matters set forth in the said bill and that your actings and doings in the premises are contrary to equity and good conscience; we, therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command you, the said Detroit United Railway, and the persons before mentioned, and each and every of you, under penalty of Ten Thousand Dollars, to be levied on your lands, goods and chattels, to our use, that you do absolutely desist and refrain from collecting or receiving or attempting to collect or receive any rate, charge or fare for the transportation of passengers for hire within the City of Detroit in excess of five cents for a single fare, or at the rate of six tickets for a quarter, or at the rate of eight tickets for a quarter for workingmen's tickets, so called, good between

five and six-thirty o'clock A. M. and four forty-five and five forty-five o'clcok P. M., until the further order of this Court.

Witness, the Honorable Harry J. Dingeman, Presiding Circuit Judge, and the seal of the said Circuit Court at Detroit, Michigan, this thirteenth day of August, A. D. 1918.

Milton Oakman, *Clerk.*
By John W. Smith, *Deputy Clerk.*

ALLAN H. FRAZER,
*Corporation Counsel.*
RICHARD I. LAWSON,
*Of Counsel.*
*Attorneys for Plaintiffs.*

## EXHIBIT "5"

### COMMUNICATIONS
From the Mayor

To the Honorable the Common Council:

Gentlemen—I am forwarding herewith communication from the Detroit United Railway under date of August 2, in which the company requests a revision of the present rates of fares in order to meet a condition which they claim will result from the action of the National War Labor Board relative to the pay of the street car workers.

I am clearly opposed to any increase in the rate of fare until the claims made by the company are substantiated by your Honorable Body, and I believe that, if the increase is necessary, a uniform rate of fare should be put into effect, provided none of the city's rights are lost on lines where franchises still exist.

It is, of course, understood that in any event the agreement made shall be only for the period of the war.

I respectfully request that your Honorable Body, with the aid of the Corporation Counsel, give your earnest consideration of the matter that the rights of the city may be fully protected.

Respectfully,
OSCAR B. MARX,
Mayor.

Hon. Oscar B. Marx,
Mayor, City of Detroit,
Detroit, Michigan.

My dear Sir—As doubtless you have been advised, the National War Labor Board has rendered an award establishing changed working conditions and higher rates of pay for street car workers. This award is retroactive to June 1st, 1918.

The increased burden to be borne by the Detroit City Lines is slightly in excess of $2,000,000 for labor alone. There are other substantial increases due to the higher cost of material, taxes, etc.

In rendering its award, the War Labor Board states:

"The fares allowed the Detroit United Railway are exceptionally low, being 3 cents a passenger on some lines, 4 cents on others and 5 cents on others. They should all be raised to meet the increased cost due to the high prices of needed material and equipment and the increased pay herein awarded."

"You will appreciate that we have earned nothing with which to meet the retroactive pay allowed, and that the increases are being incurred daily.

Believing that your Honor and the Detroit Common Council appreciate fully the urgency of the situation, and will desire to take prompt action thereon, I beg to request that you will call a meeting of the Common Council for the earliest possible hour, at which we desire to propose the following:

(a) That for the time being a 5c fare with a charge of 1c for a transfer be established for all lines in the city one-fare zone.

We are advised by Counsel that it is competent for the Common Council and the Railway Company, in order to meet the conditions brought on by the war, to agree to a modification of the franchise of the Three-Cent lines respecting the rate of fare, by such a day to day agreement as would be appropriate; or

(b) That the following rates of fare be established within the one-fare zone—Single cash fare 6c, ten tickets for 55c, both with free transfers. The rates of fare now in effect on the Three-Cent lines to remain unchanged, except the 6c single cash fare and the ten tickets for 55c will be acepted on these lines and good for a transfer to the so-called Five Cent lines.

As either of the foregoing proposals is in direct accord with the finding of the War Labor Board, the company urges the necessity of immediate action on the part of the Common Council, with the hope that its judgment will be exercised with such promptness that further action on our part will not be needed.

I beg to remain,

Yours very truly,
DETROIT UNITED RAILWAY,
By F. W. BROOKS, President.

Communication received.

Unanimous consent being granted, the following was offered out of order: By Ald. Vernor:

Resolved, That the petition of the Detroit United Railway Company that it be permitted to advance the rate of fares on the Detroit Railway lines be, and it is hereby denied. And be it further resolved, That the Detroit United Railway Company be and it is hereby notified that any raise in fare or any change by them of the terms or conditions of any franchise under which it is or claims to be operating its cars within the corporate limits of the City of Detroit will be held by the City of Detroit to be a voluntary and automatic cancellation by the Detroit United Railway Company of all existing or alleged franchise obligations between it and the City of Detroit. And be it further resolved, That the City Clerk be and he is hereby instructed to serve upon the Detroit United Railway Company a certified copy of this resolution.

Adopted as follows:

Yeas—Ald. Ashe, Auch, Bleil, Bradley, Braun, Brennan, Crane, Dill, Elhs, Glinnan, Hindle, Littlefield, Lodge, Mitter, Nowe, Reinhold, Ross, Schultz, Thompson, Vernor, Walsh, Wenzel, Zink and the President—24.

Nays—Starkey—1.

## IN THE SUPREME COURT OF THE UNITED STATES.

DETROIT UNITED RAILWAY,
a Corporation,
Plaintiff and Appellant,
vs.
CITY OF DETROIT,
a Municipal Corporation,
Defendant and Appellee.

No. 666.

EASTERN DISTRICT OF MICHIGAN, COUNTY OF WAYNE, ss:

ELLSWORTH J. BURDICK, being duly sworn, deposes and says:

That he is Assistant General Manager of the Detroit United Railway and has been connected with said Company since 1895, and that the Common Council of the City of Detroit since November 9, 1909, has passed upwards of two hundred and ninety-five resolutions and ordinances regulating service of cars, the repairs and reconstruction of tracks, and the general operation of the street railway system within the City of Detroit, and that said resolutions affected alike the franchise as well as the so-called non-franchise lines.

(SEAL)

ELLSWORTH J. BURDICK.

Subscribed and sworn to before me this 4th day of October, 1918.

JANE ATKINSON,
*Notary Public, Wayne County, Michigan.*

My commission expires September 3, 1921.

SUPREME COURT OF THE UNITED STATES.

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|---|---|
| DETROIT UNITED RAILWAY, a Corporation, Plaintiff and Appellee, vs. CITY OF DETROIT, a Municipal Corporation, Defendant and Appellee. | No. 666. |

EASTERN DISTRICT OF MICHIGAN, COUNTY OF WAYNE, ss:

EDWARD H. IVES, being first duly sworn, deposes and says that he is Assistant General Superintendent of the Detroit United Lines and as such is in charge of the operation of the cars upon the city and interurban lines of said system; that he is a resident of Highland Park; that the City of Detroit is essentially an industrial city; that the commodities, articles and products of the factories of the city are automobiles, foundry and machine shop products, brass and bronze products, slaughtering and meat packing, pharmaceutical preparations, tobacco manufactures, adding machines, printing and publishing; that many of such products are of vital importance to a successful prosecution of the war; that in the City of Detroit the industries are located mainly on the river front, in the extreme easterly section of the city, in the extreme westerly section of the city, in the City of Highland Park, north of the City of Detroit, and in the northeasterly section; that in addition to such industrial sections of the city, there are large industrial sections in the City of Wy-

andotte, the Villages of Ford, Trenton and Ecorse, likewise the tractor plant of the Ford Motor Company is located at Dearborn; that all of such plants are served by the city and interurban lines of the Detroit United Lines; that the workingmen generally in the city live at great distances from the factories; that the city lines are operated as one system and one entity, the cars of one line are interchanged and operated during factory hours over the tracks of other and different lines, so that in the operations of the city system, transporting employes to and from the several factory districts and their homes, they pass over the tracks upon which franchises exist and upon tracks where franchises have expired; that the operation of such city system would be impossible were it attempted to confine operation of the city and interurban cars to only such streets upon which franchises exist; that the southwestern section of the city is served by cars of the Fort and Grand Belt Lines, and that there are approximately twenty-five thousand (25,000) factory employes in said district; that the western industrial section is served by the Grand Belt, Michigan, Grand River and Crosstown Lines, and that there are approximately fifteen thousand (15,000) factory employes in said district; that in the Milwaukee District, so called, served by the Fourteenth, Trumbull, Hamilton, Grand Belt, Woodward, Brush, Harper, Baker, Davison-South Chene Lines, there are approximately seventy thousand (70,000) men employed in said district; that in the Highland Park District, served by the Hamilton, Woodward and Victor Lines, in which district is located the Ford Motor Company's plant, there are approximately thirty-five thousand (35,000) men employed in the factories; that in the southeastern section, served by the Gratiot, Mack, Grand Belt, Myrtle, Fort,

Crosstown and Jefferson Lines, there are upwards of thirty thousand (30,000) men employed in the factories in said district.

Further deponent says that for many years last past there have been operated in the City of Detroit routes from the extreme easterly to the extreme westerly part of the city, also from the northeasterly and the northwesterly sections of the city, also from the northerly to the southerly part of the city, into the heart of the city and beyond to the other extremity of the city; that such routes have been known to the public and are operated over tracks where franchises exist and where franchises have expired without regard to the fact that such franchises have expired; that the operation of the routes above described would be destroyed if compelled to terminate at the points on the streets where franchises have expired, for the reason that at such points there are no wyes, turnouts or switches for the turning of cars; that to install the necessary wyes, turnouts and switches for the turning of cars would involve the expenditure of many hundreds of thousands of dollars and require a great length of time for completion, owing to the facts that all such wyes, switches, etc., would have to be specially made and placed in locations which would be an almost impossible task with the present demand for steel.

Further deponent says that the Ford Motor Company, to his knowledge, is now endeavoring to transport its employees by motor busses from the Eagle Plant to the nearest car line, a distance of approximately one and one-half miles, pending the construction of a street car line to said plant, and further it is reliably estimated that the cost of such transportation amounts to one hundred and eighty thousand dollars ($180,000) per annum.

Further deponent says that upon the several occasions upon which operation of the cars has been suspended, either due to strikes, mob action or other causes, the great majority of the factories have been paralyzed.

Further deponent says that the individual factories employ from three hundred to upwards of thirty thousand men.

Further deponent says that the attached may showing franchise and non-franchise lines within the city and the location of the principal industries of the city is a correct map.

Further deponent saith not.

EDWARD H. IVES.

Subscribed and sworn to before me this 4th day of October, 1918.

JANE ATKINSON,

*Notary Public, Wayne County, Michigan.*

My commission expires Sept. 3, 1921.

## SUPREME COURT OF THE UNITED STATES.

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|---|---|
| DETROIT UNITED RAILWAY CO., a Corporation, Plaintiff and Appellant, vs. CITY OF DETROIT, a Municipal Corporation, Defendant and Appellee. | No. 666. |

IN THE EASTERN DISTRICT FOR THE STATE OF MICHIGAN, COUNTY OF WAYNE, SS.

JOHN KERWIN, being duly sworn, deposes and says that he is Superintendent of Tracks of the Detroit United Railway, and as such has charge of the construction and maintenance of the roadbed of said company, and that from the fourteenth of November, nineteen hundred and nine, to the present time, said company has installed in the streets of the City of Detroit new tracks, renewals, curves, connections and extensions which measure at least 162,875 miles of single track.

JOHN KERWIN.

(Seal)

Subscribed and sworn to before me this 4th day of October, A. D. 1918.

JANE ATKINSON,
*Notary Public, Wayne County, Mich.*

My commission expires September 3, 1921.

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# IN THE
# SUPREME COURT OF THE UNITED STATES.

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|---|---|
| DETROIT UNITED RAILWAY, a corporation, Plaintiff in Error, vs. CITY OF DETROIT, a Municipal Corporation, Defendant. | No. 666. |

## BRIEF ON BEHALF OF PLAINTIFF IN ERROR, IN SUPPORT OF MOTION TO ADVANCE OR FOR AN INJUNCTION PENDING HEARING.

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Rule 32 of the Rules of this Court provides:

> "Cases brought to this court by writ of error or appeal, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by Rule 6, in regard to motions to dismiss writs of error and appeals."

The learned District Judge who entered the decree dismissing the Plaintiff's Bill of Complaint, in the District Court, directed in his *written* opinion filed, that a decree be entered dismissing the Bill for *want of equity*. It was in

fact dismissed for want of jurisdiction for the Court in the same opinion stated "It seems therefore clear to me that the plaintiff has not shown any deprivation of its property without due process of law, or any impairment of its contractual obligations, as charged in the Bill, and these being the only grounds for relief, I am of the opinion that the latter should be dismissed."

In other words, the court determined that upon the face of the Plaintiff's Bill of Complaint he had not shown "any deprivation of its property without due process of law, or any impairment of its contractual obligations." These were the jurisdictional grounds upon which the plaintiff, claimed that jurisdiction under its Bill, was conferred upon the District Court of the United States, as the parties to the case were both citizens of the State of Michigan.

A similar situation was presented by the disposition of the case of *Cuyahoga River Power Company vs. Akron*, 210 Federal Reporter, 524. In the latter case jurisdictional allegations were made as to impairment of contract rights, and taking of property without due process of law, but it also appeared upon the face of the Plaintiff's Bill of Complaint that the plaintiff claimed that such taking of property without due process was threatened under proceedings to be taken under the statutes of Ohio and ordinances adopted by the City of Akron, which provided that compensation would necessarily be paid if the property of the plaintiff was taken. The District Court dismissed the plaintiff's bill for want of jurisdiction on the ground that it presented no Federal question, because if the plaintiff had any rights they could be appropriated only by paying for them in pursuance of the verdict of the jury and the judgment of the Court. The statutory certificate was made and the case came directly to this court by appeal.

We submit that the situation of the two cases was substantially identical. Further on this subject we call attention to the fact that reference is made in brief of counsel for defendant to the suit brought by the City against the Railway Company to enforce the provisions of the ordinance referred to,—a suit commenced in the State Court the day following the commencement of the suit by plaintiff in the District Court of the United States.

On September 17th, we filed a motion in the State Court, to stay the proceedings in that case, and to dissolve the injunction granted, on the ground, among others, that the District Court had acquired jurisdiction over the subject matter before the commencement of the City's suit in the State Court, and that the City had no right to commence the suit it did in the State Court. That case is now before the Supreme Court of the State of Michigan, upon proceedings to review the refusal of the Circuit Judge to grant the plaintiff's motion, and the following is a quotation from the brief of the City's counsel,—the same counsel that appear for the City herein—presented in the argument of the case referred to in the Supreme Court of Michigan:

> "The respondent makes the further claim in this respect that the petitioner's bill filed in the District Federal Court lacks completely subject-matter sufficient to give the Federal Courts jurisdiction; that the petitioner did not in said bill allege facts upon which a suit might be predicated. In this claim the respondent is supported by the disposition that was made of said suit by Judge Tuttle and Mr. Justice Day, respectively."

We therefore contend that the case at bar should be treated as coming within the provisions of Rule 32 referred to.

Subdivision 7 of Rule 26 of this Court, provides in substance, that other cases than those involving some matter of general public interest, or which may be entitled to precedence under the provisions of any Act of Congress, shall not be set down for any particular day, *except under special and peculiar circumstances* to be shown to the court.

We submit that the circumstances set forth in the statement of facts accompanying the motion made herein, "show special and peculiar circumstances" which warrant the court in advancing this case for hearing.

The only matter that was presented for consideration of the District Judge in the court below, was the question of allowing or granting a temporary writ of injunction restraining the enforcement of the ordinance referred to in Plaintiff's Bill of Complaint. No answer was filed and the court had nothing before it but the Plaintiff's Bill of Complaint. Instead of determining the question submitted for the consideration of the Court, it adopted the unusual course of considering the case on its merits, as set forth in Plaintiff's Bill, and by taking into consideration, matters entirely outside of the record, reached as we contend the erroneous conclusion resulting in his directing the dismissal of the Plaintiff's Bill of Complaint.

As pointed out in the statement of facts referred to, had the District Judge adopted *the usual course,* he would have entered an order denying the plaintiff's application for writ of injunction, and from this order plaintiff would have had a right to appeal directly to the Circuit Court of Appeals where, under paragraph 1121 of the Compiled Statutes of the United States, 1916 (Judicial Code 129) its appeal would have been entitled to preference as to time of hearing.

The application having been heard and disposed of on August 13th, plaintiff's appeal would have been entered for hearing on the October docket in the Circuit Court of Appeals, and the case undoubtedly would have been heard and disposed of before this time.

Instead of so dealing with the case as to permit of a speedy determination of the question involved, the District Judge adopted the unusual course referred to, of dismissing the Plaintiff's Bill of Complaint when only a motion for an injunction was presented for his consideration and this rendered it necessary that the plaintiff's appeal should be taken to this Court instead of the Circuit Court of Appeals.

The situation is unusual and peculiar in other respects. For instance, to support the conclusion reached by the Court, it went entirely outside of the record in some particulars, and stated alleged facts in direct contradiction of the facts alleged in plaintiff's bill. In his opinion, page 200 of the record, he stated, "Here the plaintiff makes no claim that it is under the duty * * * to continue to operate its street cars upon what it refers to throughout its bill as the 'non-franchise' lines in the city." The plaintiff alleged specifically that it was under a duty to the public to continue the operation of its street railway system; that this duty was recognized by the public and that its failure to continue the operation of its street railway system, would paralyze the industrial and commercial life and interests of the city. In addition to this the Court in *City of Denver vs. Denver Water Works,* 38 Supreme Court Reporter, 278, found that:

> "The very act of regulating the company's rates was a recognition that its plant must continue, as before, to serve the public needs."

The plaintiff has been by the enactment of the ordinance complained of, which became effective August 13, 1918 (for about ten weeks or seventy days), caused to operate its so-called five cent or non-franchise lines at a loss of Two Thousand Dollars ($2,000) per day above the loss that it sustains in having no revenue to provide for any return upon the capital invested in its system which the public is having use of in serving its needs.

This loss cannot be recouped in the future, nor can any loss that it will continue to suffer pending the final disposition of this case and the granting of such relief as plaintiff thinks it is entitled to, and the injury suffered is not only very great but is irreparable, and we submit entitles the plaintiff to a speedy hearing upon its appeal.

**Upon the question of granting an Injunction pending the hearing of the case, if the Court should decline to advance it for hearing, we submit that there is no question about the jurisdiction of the Court to grant such relief.**

The appeal in the present case was taken under Sec. 238 of the Judicial Code authorizing an appeal in any case in which a state law is claimed to be in contravention of the United States Constitution.

*2nd U. S. Compiled Statutes,* Sec. 1215.

By Sec. 262 of the Judicial Code, the Supreme Court has power to issue all writs not specifically provided for by statute necessary to the exercise of its jurisdiction and agreeable to the usages and principles of law.

*2 U. S. Comp. Stat.,* Sec. 1239.

Writs of injunction may be granted by any Justice of the Supreme Court in cases where they might be granted by the Supreme Court.

*2 U. S. Comp. Stat.,* Sec. 1241.
*Judicial Code,* 264.
*Omaha Ry. vs. Interstate Commerce Commission,* 222 U. S. 582.

On a bill filed by a Street Railroad Company in the Commerce Court to enjoin the enforcement of an order of the Interstate Commerce Commission fixing fares, a decree was entered dismissing the bill and dissolving a preliminary injunction that had been issued. An appeal from this decree was taken to the Supreme Court and a motion made for an order to maintain the status quo pending the appeal. The Court ordered that the enforcement of the order of the Commission should be suspended and enjoined during the pendency of the appeal on condition that the appellant give bond to secure the payment of the damages resulting in case the Commission's order were ultimately held valid. The Court cites as authority for its action Sec. 716, Revised Statutes (the same as Sec. 262 of the Judicial Code above cited) and cases hereinafter referred to.

*Ex parte Milwuakee Railroad Company,* 5 Wallace 188.

In this case the Court, on an appeal from a foreclosure decree, issued a supersedeas staying proceedings on the decree saying that under the 14th section of the Judiciary

Act it had a right to issue any writ necessary to render its appellate jurisdiction effectual.

*Leonard vs. Ozark Land Company,* 115 U. S. 465.

On an appeal from a decree which, among other things, enjoined the removal of certain timber, which appeal operated as a supersedeas, the District Judge in allowing the appeal had directed that it should not operate to affect the injunction provisions of the decree. The appellant moved the Supreme Court to vacate these provisions of this order. The Court said that it was settled that the injunction provisions of the decree were not affected by an appeal, that the provisions of the order complained of did not enlarge the injunction contained in the decree and the motion was denied. But the Court say: "This Court no doubt has the power to modify an injunction granted by a decree below in advance of a final hearing of an appeal upon its merits."

*In re Claasen,* 140 U. S. 200.

Held that on allowance of a writ of error to review a judgment of conviction in a criminal case, the court or any judge could issue a supersedeas staying the execution of sentence.

*United States vs. Shipp,* 203 U. S. 563.

The defendant in a criminal case in a state court, after conviction and sentence, applied to the United States Circuit Court for a habeas corpus, alleging that in his trial he was deprived of certain constitutional rights. From a refusal of the writ, an appeal was taken to the Supreme Court of the United States and an order made staying proceedings against the appellant. After the making of this order, the appellant was murdered by a mob and this case was a contempt proceeding against certain of the murderers. The court held that the question of jurisdiction of the habeas corpus proceedings could only be decided by itself, and that

until its judgment declining the jurisdiction should be announced, "it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition just as the State Court was bound to refrain from further proceedings until the same time." See p. 573.

See also

*Louisville & Nashville Railroad Co. vs. Railroad Commission,* 208 Fed. Rep. 35, 58.
*Murray vs. Overstoltz,* 8 Fed. Rep. 110.

Sec. 266 of the Judicial Code (2 U. S. Comp. Stat., Sec. 1243) provides that no interlocutory injunction restraining the enforcement of the statute of the state shall be issued except after hearing by three judges, of whom one shall be a Justice of the Supreme Court or a Circuit Judge. "Statute of the state" in this section does not include a city ordinance.

*Sperry vs. Tacoma,* 190 Fed. Rep. 682.
*Cumberland Telephone Company vs. Memphis,* 198 Fed. Rep. 955.
*Birmingham Water Works vs. Birmingham,* 211 Fed. Rep. 497.
*Calhoun vs. Seattle,* 215 Fed. Rep. 226.

It appears by the uncontradicted evidence before this Court that the loss referred to of Two Thousand Dollars ($2,000) per day, in addition to the loss of return on the capital invested, is irreparable. Plaintiff by the affidavit of W. D. Bonthron shows that, based upon the operations of the Company for the period January 1st to July 1st, 1918, applying the provisions for such period of the ordinance compained of as to rates of fare, there would have been during such period a loss of Three Hundred Ninety Three Thousand Three Hundred Fifty-four and 96/100 Dollars ($393,354.96), without making any provision for

payment of interest on the value of the property employed in rendering the service. See page 13 of Affidavits and Exhibits filed, where the following statement will be found:

| | | |
|---|---|---|
| Gross Revenues ..... | | $4,435,117.17 |
| *Deduct:* | | |
| Operating Expenses ..... | $3,659,583.00 | |
| Taxes ..... | 235,683.65 | |
| Increase in Pay Rolls..... | 729,764.98 | |
| Depreciation ..... | 203,440.50 | |
| | | 4,828,472.13 |
| Deficit from operation before making any provision for return on the investment.. | | $ 393,354 96 |

It has thus been demonstrated and is not questioned by any countershowing that the rates of fare fixed by such ordinance are confiscatory, not compensatory, and we submit that an injunction should be granted restraining the enforcement of the ordinance until the final hearing and determination of this case.

## REPLY TO BRIEF OF DEFENDANT'S COUNSEL.

Since writing the foregoing we have received a copy of brief of counsel for the defendant in this cause opposing the advancement of the case for early hearing or granting injunction pending the hearing.

We note from an examination of this brief that counsel regards the statement of facts submitted on behalf of the plaintiff in connection with the motion made herein as wholly incomplete and insufficient. We insist it will be found that any variation between the statement of facts outlined by defendant's counsel and that outlined in behalf of the plaintiff in connection with the motion referred to results from the fact that defendant's counsel's statement is largely based upon matters outside of the record herein.

It would be naturally inferred from the statement made by defendant's counsel that the plaintiff, as a result of the litigation of 1913, recognized an obligation to pay for the use of the streets. This is in conflict with the facts. The plaintiff in that connection resisted the payment of the so-called rental fixed by resolution of the Common Council prior to August, 1913, and the subject was considered by the Supreme Court of Michigan in the case of

*City of Detroit vs. Detroit United Ry.*, 172 Mich. 155,

where Mr. Justice McAlvay, speaking for the Court, said:

> "The defendant company never acquiesced in or accepted the terms (of rental) imposed in case of the use of these streets by defendant after the expiration of the franchises. On the contrary, by writ-

ten notice, the complainant was notified of its claim * * * that the charges fixed for a further use of the streets were excessive and confiscatory, and that it would not accept the same. This position thus taken by defendant has been the subject of determination in this litigation. The cases cited by complainant in support of its contention are not in point, because the relations of the parties in those cases in no instance are similar to these in the instant case, and the subsequent user by defendant, having been in defiance of complainant's claim, did not establish an acceptance. While the cases cited to the effect that a municipality, on the expiration of the franchise of a street railway, may impose such terms as it sees fit for the further use, are accepted authority, none of them determine that they become operative without acceptance by the railway. No authority has been cited to the effect that a municipality may arbitrarily, without the consent of the grantee, impose terms upon a street railway in granting franchises.

* * * * * * *

The conclusion to be drawn from our determination of the different propositions discussed is that the contractual relations between these parties ended upon the expiration of the franchises, and all rights in the defendant company to occupy the city streets, and maintain and operate a street railway thereon, then terminated and defendant thereafter became a trespasser; that complainant has the absolute and unquestioned right at any time to compel the defendant company to vacate the streets upon which these franchises have expired. * * * *We have determined that complainant could not arbitrarily fix a fee for the use of these streets by defendant,* from which conclusion it follows that this Court cannot assume such power."

In this connection we would say that in the argument of counsel on behalf of the City in that case, as evidenced by its briefs, which we have just examined, it was claimed, on behalf of the City, that the right to fix such rental for

the use of the streets resulted from the charter provisions of the City enacted by the Legislature of the State giving it power to control the use of all streets and highways within its limits.

We therefore submit that upon the question of power granted by act of the Legislature of the State of Michigan, the construction given by the court of last resort of that State is conclusive upon everybody.

At this point we think it proper to take notice of the claim made in the brief of defendant's counsel that the above decision is authority for the proposition that plaintiff, by continuing to operate its cars after its franchises had expired, became a continuing trespasser. The language quoted from the opinion should receive a construction in consonance with the case itself. There, relator operated its cars in opposition to resolutions of the Common Council and what was held was that this made it a trespasser. This is clearly shown by the decree, a copy of which will be found in the records of that case reported in 229 U. S. 39. Section 5 of that decree reads:

> "That by reason of said defendant's refusal to comply with the terms of the resolutions of the Common Council of the City of Detroit (of which T, S and Q set forth in the bill of complaint are copies), the defendant is without any rights in or to said streets and it has been and is a trespasser in continuing to occupy them and operate cars thereon."

Defendant's counsel, under the heading "Argument in Opposition to Motion to Advance the Hearing of the Case," upon page 7 of its brief, instead of presenting any reason why the case should not be advanced for hearing, proceeds to discuss the merits of the case as upon the appeal. In this connection we submit that under the decisions both of the Supreme Court of Michigan and of this Court there is

no room for argument against the contention on behalf of plaintiff, made in its bill of complaint filed in the court below, that its contract rights were impaired by the enactment of the ordinance complained of.

In the case of

*People vs. Detroit United Railway,* 156 Mich. 662,

the Supreme Court of Michigan, speaking by Mr. Justice Hooker, in effect passed upon the question involved and in his opinion stated:

> "In my opinion there is little excuse for the prosecutions, of which the two involved in this cause are samples. Under the most elementary principles, and by the express terms of the ordinance, the defendant secured contract rights under the ordinance of 1894 to run two lines of street railway, one a crosstown line, and another running at right angles therewith, agreeing to give transfers at intersecting points. Now it is proposed (by the provisions of the ordinance referred to) to compel them to do more than this. They are asked to estabish an additional route by putting on cars whose route shall be a combination of portions of both of said original routes. The effect would be to compel an unnecessarily frequent schedule on parts of the lines, or an infrequency of cars upon other parts. * * * Furthermore, it would deprive defendant of its right to collect a second fare from passengers who should transfer to other lines intersecting Fourteenth street. The claim that the ordinance, in section 17, reserved power to the council to regulate the running of cars, is not overlooked.
> * * *
>
> The ordinance is an infringement of the constitutional provision regarding the impairment of contracts."

The provisions of the Constitution of Michigan relating to the impairment of contract rights and taking property without due process of law are, in substance, the same as

the provisions of the Constitution of the United States in that regard.

This Court in the case of

*Detroit United Ry. vs. Michigan,* 242 U. S. 252,

in considering some of the identical franchises which were under consideration by the court below, notably the so-called Fairview franchise and the franchises in the Township of Greenfield, set out in complainant's bill of complaint, determined that the attempt upon the part of the City to compel the carrying of passengers upon tickets eight for twenty-five cents because of the extension of the territorial limits of the City to include part of the territory covered by franchises previously granted by adjoining municipalities, when the franchise previously granted by such adjoining municipalities provided for a fare of five cents without transfers, or other modifications by way of sale of tickets, impaired the obligations of the plaintiff company's franchises.

But the learned District Judge disposed of this question by arguing in his written opinion that because of the so-called exception contained in the ordinance complained of, namely, paragraph fifth thereof, there was no impairment of the contract rights of the plaintiff. The provision referred to is as follows:

> "The provisions of this ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the City, except where the same is governed by the provisions of such contract."

Plaintiff in its bill of complaint alleged that the pretended exception referred to

> "is simply colorable and meaningless and intended to be misleading and to create confusion, as it was

well known when said ordinance was adopted, as heretofore shown and alleged herein, that it would be impossible for the public to determine upon which lines, or parts of lines, such exception would apply. And said pretended exception was not incorporated in said ordinance in good faith to protect the franchise rights of the plaintiff company on any of its lines, for notwithstanding such provision, the public authorities of the City of Detroit have publicly advised and are still advising, all passengers entering cars of plaintiff company on any of its lines, no matter whether franchise or non-franchise lines, to pay no fare for transportation over such lines, except as expressly provided for in such franchise."

It was further alleged in said bill that

"Under the advice of the direct representatives of the City of Detroit, passengers entering cars have been advised not to pay the fare established by the plaintiff company as hereinbefore set forth, but only to pay fares as provided for in such ordinance. That they have encouraged and incited the people to riot and destroy the property of the plaintiff; that the people have thrown bricks, stones, and other missiles through the windows of cars, intimidating and insulting the employees of the plaintiff company operating such cars, and in many cases throwing such cars from the tracks and overturning them upon the streets, and generally creating conditions of riot throughout the City of Detroit.

* * * * * * *

*That it is the intention and purpose of the Mayor and Common Council of the City of Detroit when said ordinance becomes effective, on August 13, 1918, to forcibly enforce its provisions as to collection of rates of fare in accordance with the instructions herein set forth, and to prevent the plaintiff company from collecting reasonable rates of fare to provide reasonable compensation for the service it is rendering and must continue to render the people of the City of Detroit, and to prevent the plaintiff company from enforcing the provisions of the unexpired franchise hereinbefore set forth."*

It is shown also by the injunction prayed for in the City's bill of complaint filed in the Circuit Court for the County of Wayne, in the State of Michigan, which was granted and issued at midnight of August 12, 1913, that the construction of the ordinance contended for by the plaintiff was the one intended to be given to it and in accordance with which it was intended to be enforced.

A copy of the injunction issued in accordance with the prayer of defendant's bill so referred to is set forth in the record—"Affidavits and Exhibits in Support of Motion to Advance, or for Injunction"—at page 52, from which the following clause is quoted:

> "That it do absolutely desist and refrain from collecting or receiving or attempting to collect or receive any rate, charge or fare for the transportation of passengers for hire *within the City of Detroit* in excess of five cents for a single fare, or at the rate of six tickets for a quarter, or at the rate of eight tickets for a quarter for workingmen's tickets, so called, good between five and six-thirty o'clock A. M. and four forty-five and five forty-five o'clock P. M."

By this injunction the plaintiff company was restrained from collecting anywhere *within the City of Detroit* any fares except those provided for by the provisions of the ordinance referred to; and in this we have a practical construction of the provisions of the ordinance referred to in which the so-called exception in paragraph fifth of said ordinance is wholly ignored and disregarded.

But even if this were not so, we submit that the court below had no right to disregard the allegations referred to as to the intention the City had in enacting and enforcing the provisions of such ordinance.

A question similar to this was before this Court in the case of

*Cuyahoga Power Co. vs. Akron,* 240 U. S. 463,

where, after making a statement of the case under consideration, Mr. Justice Holmes, speaking for the Court, said:

> "It appears to us that sufficient attention was not paid to other allegations of the bill. After setting out various passages from the statutes and Constitution of Ohio and concluding that the City has no constitutional power to take the property and franchises that the plaintiff is alleged to own or any property for a water supply, it alleges that the *City does not intend to institute any proceedings against the plaintiff,* but intends to take its property and rights without compensation; that it is building a dam and has taken steps that will destroy the plaintiff's rights; that it is insolvent; *that the purpose of the ordinance and certain statutes referred to is to appropriate and destroy those rights without compensation.* * * * Whether the plaintiff has any rights that the City is bound to respect can be decided only by taking jurisdiction of the case; and the same is true of other questions raised. Therefore it will be necessary for the District Court to deal with the merits, and to that end the decree must be reversed."

The allegations in the Plaintiff's Bill of Complaint as to the confiscatory character of the rates of fare imposed by the ordinance complained of, are not only full and complete but are unanswered except in the argument of the learned District Judge who entered the decree dismissing Plaintiff's Bill of Complaint. (See paragraphs 34, 35, 36 and 37, pages 32 and 33 of the record).

But the learned Circuit Judge undertakes to answer these allegations by saying that Plaintiff Company was under no obligation to continue its service, and that it might therefore avoid a loss in rendering service to the city, by discontinuing the same. The plaintiff in its bill very fully alleged its duty to maintain such service, the absolute need therefor, and that its failure to do so would paralyze the business and industrial interests of the city and turn thousands of its citizens out of employment, etc., etc.

The specific allegations are as follows:

> "That the population resident within the territorial limits of the City of Detroit exceeds 750,000, and is distributed over all the sections and parts thereof.
>
> That the City of Detroit is an essentially industrial city—very much the largest part of its male population being employed and engaged in great industrial plants and factories being operated within the city limits and adjacent thereto and largely located at the outskirts of the city and for the most part are remote from the residences of the persons employed in such plants and factories, thus necessitating the transportation of employees of said plants and factories to and from their homes to their places of employment.
>
> That the street railway system of the plaintiff company is substantially the only means of transportation for such employees to and from their homes to the places of their employment and the

interruption of the operation of plaintiff company's entire street railway system as a single unit for such transportation or the separation of the so-called franchise lines from the so-called non-franchise lines, would paralyze the industrial and business life of the City of Detroit and throw thousands of its residents out of employment and shut down its industrial plants and factories.

That it would be impossible to serve the transportation needs of the residents of the City of Detroit by the separate operation or the discontinuance of the operation of either the so-called franchise lines or the so-called non-franchise lines."

(See p. 18 of Plaintiff's Bill of Complaint.)

The city has recognized the necessity of its people having the service afforded by the plaintiff's system of street railways, ever since—even before the franchises of the company, referred to herein, expired, in 1909, and there is set forth in an answer filed by the city in a proceeding brought in 1909, which was reviewed by the Supreme Court of Michigan in *Attorney General vs. Wayne Circuit Judge,* 157, p. 617, recognition of such necessity. In the opinion of the Court a portion of the answer of the city filed in that case, was quoted as follows:

"That the City of Detroit is a city covering many miles of territory with a population, to-wit, 400,000 inhabitants (1909). That in the year 1862 certain rights were granted in the streets of the City of Detroit to certain gentlemen who afterwards organized the Detroit City Railway Company. That in the year 1879 these rights were extended for a period of 30 years. That these grants by the City of Detroit were made under the laws of the State of Michigan. That on the 14th day of November, 1909, the period of extension granted in the year 1879 will have been completed. That for a number of years the street railway question has agitated the public mind, and has been the subject of discussion in political campaigns. That these defend-

ants are informed and believe that the character of the population, the manner in which the city has been built, is such that street railway service is essential in order to accommodate the people from day to day. That it is necessary to take steps to continue the street car service. That the City of Detroit as a municipality is powerless to engage in this enterprise itself, and that it is incumbent upon the officers of the City of Detroit to make an investigation and ascertain, if possible, upon what terms and upon what conditions the City may continue to enjoy street railway facilities. And that the expenditure of money for this purpose is the expending of money for a public purpose."

The necessity referred to in this answer of the City has not diminished but has increased with increasing population. As recited in this answer, the population of the City in 1909 was 400,000. It is now more than double that number and the City still has no other means of transportation than plaintiff's system of street railway, except, of course, private conveyances.

In reaching the conclusion that the learned District Judge reached with reference to this branch of the case, he entirely failed to give any effect to the enactment of the ordinance complained of, while this Court in considering the case of *City of Denver vs. Denver Water Works,* 38 Supreme Court Reporter, 278, shows "that the very act of enacting the ordinance complained of fixing the company's rates of fare, was recognition that the operation of plaintiff's railway system was necessary to serve the public needs."

It should be borne in mind that by the provisions of the ordinance, it was to continue in force for one year from August 9th, 1918, unless sooner amended or revoked.

This ordinance was enacted after the resolution of the Common Council directing the city to take steps to oust the plaintiff company from the streets of Detroit, and we submit that the latter action cannot be regarded as having been taken in good faith for the reason that since the decision by the Supreme Court of Michigan, affirmed by the decision of this Court in 1913, the right of the city to oust the plaintiff on Fort Street, one of the important arteries of traffic within the city, was established and it placed in its hands, the power to oust the plaintiff at any time it saw fit from the streets, and the fact that they have failed for more than five years to exercise their power in this regard, is conclusive evidence that it was because it was recognized by the city as well as by the plaintiff company that the service rendered by the street railway system of the plaintiff company, was absolutely essential to the business and industrial life of the city.

Under the heading "Argument in opposition to granting an injunction" the defendant says:

> "It does not appear that paintiff is losing money or does not receive a fair return upon its railway property within and upon the streets where its franchises have expired.
>
> The figures set forth in Plaintiff's Brief, pages 13 and 14, showing the alleged value of the property, operating expenses, net returns, increased pay roll and depreciation *affect all of the Plaintiff's property within the one fare zone of the City of Detroit.*"

In this statement counsel is clearly in error, for by the affidavits of Messrs. Bonthron & Reifenberick, the five cent or non-franchise lines are segregated from the so-called three cent lines or franchise lines, both as to earnings, operating expense and value of property.

Again defendant's counsel say on page 12 of their brief:

> "On January 1, 1918, Barclay Parsons & Klapp fixed the value of plaintiff's property at $23,250,252. This appraisal was largely a copy of Professor Cooley's appraisal of January 1, 1915. In Professor Cooley's appraisal there is included something over $5,000,000 for franchise values on the property of the plaintiff within the one fare zone of the city."

In this counsel is again clearly in error. The appraisal of Barclay Parsons & Klapp as of January 1st, 1918, segregates the so-called three-cent lines from the five-cent or non-franchise lines, as shown by appendix hereto attached. The appraisal of plaintiff's property as $23,250,252 relates only to the five-cent or non-franchise lines. The depreciated value of the three-cent lines is given in the same schedule as $5,476,945.00 and it will be seen from said schedule (appendix attached) that nothing whatever is included for franchise value or even for going concern value.

Again defendant's counsel are apparently confused with reference to the so-called Prof. Cooley appraisal. While it is true that as of January 1st, 1915, the Professor Cooley appraisal included the appraisal of the value of the plaintiff company's franchises, at that time, no franchise value was included in the figures given in bill of complaint of $33,633,433, as the value of plaintiff's property employed in the operation of its street railway system within the City of Detroit.

The following gives the value of the plaintiff's property within the one-fare zone, as of January 1st, 1915, as fixed by Professor Cooley's appraisal:

| | |
|---|---|
| Cost of reproduction | $26,562,535 |
| Cost of reproduction, less depreciation | 23,608,865 |
| Franchise Value | 6,105,214 |
| That gives a grand total, cost of reproduction | 32,667,749 |
| Cost of reproduction, less depreciation | 29,714,079 |

The difference between the figures given in Professor Cooley's cost of reproduction, $26,562,535 and the valuation given in the plaintiff's Bill of Complaint, $33,633,433 is made up in the amount of expenditures for additions and betterments to the plaintiff's property between January 1st, 1915, and July 1st, 1918.

Again referring to statement contained in defendant Counsel's brief, foot of page 9, "The claim that the plaintiff makes at the bottom of page 16 of its brief herein, is not borne out by the facts. 'The response of the Common Council to the recommendation of the War Labor Board was to adopt the ordinance complained of, on August 9, 1913, very greatly reducing the rates of fare instead of increasing the same as recommended.' The rates of fare were not reduced by the ordinance lower than what they had been for a period of thirty years prior to August 7th, 1913."

This is an erroneous statement also. The rates which the War Labor Board found to be inadequate, even before the additional burden of $2,000,000 annually, on account of increased compensation granted to plaintiff's employees by the award of the War Labor Board, were the rates in force at the time of the hearing before the War Labor Board, namely June and July, 1918. The rates of fare that had been in force from December 17, 1917, down to August 7th, 1918, was a cash fare of five cents with eight tickets for a quarter during an hour and a half in the morning and an hour in the evening.

Referring to the rates of fare in force, said to be three cents on some lines, four cents on some lines and five cents on some lines, the War Labor Board said all of these

were inadequate and should be raised. They did not refer to rates that had been in force thirty years before December 1st, 1917, but to the rates of fare that were then in force June, 1918, which, as stated, they found to be wholly inadequate and recommended that they be increased.

It is literally and absolutely true that instead of increasing as recommended by the War Labor Board, the Common Council, by the provision of the ordinance complained of, reduced the same.

In addition to this the Common Council had before it, full information that the rates fixed by the ordinance complained of, were inadequate.

In 1914 the Street Railway Commission of the City, by the authority and with the approval of the Mayor and Common Council, employed Barclay Parsons & Klapp, a firm of eminent engineers of New York, to make a survey of the entire passenger transportation situation within the City of Detroit, including the valuation of the property of the present system, looking to the possible purchase of the same by the City, etc. Their investigations continued throughout the years 1915, 1916 and 1917, and they made several reports in reference to their investigations. The last of these reports was filed in April, 1918, and included an appraisal of the plaintiff company's property segregating the so-called three-cent lines and five-cent or non-franchise lines; and in their report they very clearly outlined their views as to the inadequacy of the then existing rates, and made recommendations as to a fair rate to be applied to the transportation system of the plaintiff company. This recommendation was as follows:

> "Six tickets for 25 cents, good for a continuous ride on any line in the City, without transfer, but

to include the car-to-car transfer on the same line, such as the Fort East and West, etc.

Five cents to be charged for a single cash fare or for a ride, including a transfer to any other intersecting or connecting line."

No other tickets or rates of fare to be used."

(Page 34, Barclay Parsons & Klapp Report, April, 1918.) (See appendix attached hereto, page 33.)

It will be noted that the rate recommended was to apply to the entire system of the plaintiff, within the City of Detroit, including the so-called three-cent lines, as in other portions of the report, as shown by the appendix hereto attached they recommended the abolition of the distinction as to rates of fare between any of the lines within the City.

Following this report of April, 1918, namely in June of 1918, upon a demand made by the employees of the plaintiff company for increased compensation for their services, a strike of such employees resulted and this resulted in the plaintiff company and the representatives of its employees, entering into an arbitration agreement, by the terms of which the War Labor Board of the United States was made arbitrator, and the award subsequently made by the War Labor Board provided for increased rates of compensation to plaintiff's employees, and made such regulations as to hours of service, etc., as to increase the operating expenses of the plaintiff company in operating its street railway system approximately $2,000,000 per annum.

This fact was also before the Common Council before they enacted the ordinance complained of, and necessarily indicated that even the increased rates recommended by Barclay Parsons & Klapp, would prove inadequate because of such increase in the rates of compensation to plaintiff's employees fixed by the award of the War Labor Board.

Counsel for defendant argues the question in their brief, of the power of the city to fix rates for the plaintiff company, by ordinance. While the question is not involved in this case, so far as we understand it, we have made the claim in the suit instituted by the city in the state court that the city has no power under the constitution and laws of the State of Michigan to fix rates of fare for the plaintiff company by compulsion or otherwise than by agreement.

This question, in substance, was recently considered and decided by the Supreme Court of Michigan in the case of *Traverse City vs. Railroad Commission,* decided July 18, 1918, 168 N. W. R. 480, in which that Court quoted with approval from the opinion of the Supreme Court of Oregon, in *City of Woodburn vs. Public Service Commission,* 82 Oregon 114 (161 Pacific 391) as follows:

> "The power of the State to regulate rates by compulsion is a police power, and must not be confused with the right of a city to exercise its contractual power to agree with a public service company upon the terms of a franchise. The exercise of a power to fix rates by agreement does not include or embrace any portion of the power to fix rates by compulsion. When Woodburn granted the franchise to the telephone company, the city exercised its municipal right to contract, and it may be assumed that the franchise was valid and binding upon both parties until such time as the State chose to speak; but the city entered into the contract subject to the reserved right of the State to employ its police power and compel a change of rates, and when the State did speak, the municipal power gave way to the sovereign power of the State: (Citing cases). The power to fix rates by compulsion as distinguished from the power to fix rates by agreement is not granted to cities or towns, nor is the right of the legislative assembly to legislate

upon that subject curbed by Article II, section 2, of the State constitution because in its essence it is neither a municipal power nor an incident to a pure municipal power, and therefore, the legislative assembly was not prohibited from making the public utility act applicable to urban as well as extra-urban territory."

This is not at all in conflict with the decision of this Court in the City of *St. Louis against Western Union Telegraph Company,* 149 U. S. 467, quoted in defendant's brief, page 17 for following the quotation referred to, made by Counsel for defendants, Justice Brewer, page 471, referring to *St. Louis vs. Bell Telephone Company,* 96 Missouri, 623, in which the power of the city to regulate charges for telephone service was denied says:

> "But obviously that decision does not cover this case. The relation of a telephone or telegraph company to its patrons, after the use of the streets has been granted, does not affect the use, and power to regulate the use does not carry with it by implication power to regulate the dealings between the corporation having such use and its individual patrons."

But the validity or invalidity of the ordinance is a matter of no consequence in this case. When plaintiff commenced this suit, the ordinance had been enacted in the form of law and municipal officers threatened to enforce it. Since the suit was commenced it has actually been enforced by an injunction issued from a State Court. In these circumstances, plaintiff has precisely the same right to relief as if the ordinance was a valid enactment.

See

*Raymond vs. Chicago Traction Company,* 207 U. S., p. 36.

*Home Telephone & Traction Company vs. Los Angeles,* 227 U. S. 278.

In the latter case it is said:

> "It may not be doubted that where a State officer (and officers of a municipality are State officers) under an assertion of power from the State is doing an act which could only be done upon the predicate that there was such power, the inquiry as to the repugnancy of the act to the Fourteenth Amendment cannot be avoided by insisting that there is a want of power. * * * For the purpose of enforcing the rights guaranteed by the amendment when it is alleged that a State officer in virtue of state power is doing an act which if permitted to be done prima facie would violate the amendment the subject must be tested by assuming that the officer possessed power if the act be one which there would not be opportunity to perform but for the possession of some state authority."

**In the absence of legislative or constitutional restriction a common carrier has the power to fix its own rates—subject to review by the courts as to their reasonableness.**

Under the Street Railway Act of 1867, the only municipal power to fix street railway fares was a contractual power. That power still exists, but under Section 25 of Article VIII of the State constitution, no franchises other than those subject to revocation at will of the city can be given unless approved by vote of the city electors. The power to grant franchises is recognized in the chapter of the city charter creating a street railway commission. (City Charter, Title IV, Chapter 13, Sections 1, 10 and 11, pp. 66-68).

Subject to the limitations of the constitution and the city charter, the powers given by the Act of 1867 to make contracts fixing the terms and conditions of street railway op-

eration, including rates of fare, are still possessed by the City of Detroit. Where contracts made under that Act still exist or shall be entered into hereafter, the provisions of the Act apply, but not elsewhere. Where there is no existing contract and in the absence of the establishment of a reasonable fare by a valid exercise of the city's legislative power, the company is entitled to exact and receive reasonable rates.

See *Interstate Commerce Commission vs. Chicago Great Western Railway Company*, 209 U. S., 108, where the Court say (p. 119) quoting from the opinion of Circuit Judge Jackson:

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits." And say further:

"It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly when rates are changed the carrier making the change must, when properly called upon, be able to give a good reason therefor, but the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done. Those presumptions of good faith and integrity which have been recognized for ages as attending human action have not

been overthrown by any legislation in respect to common carriers."

See also *Munn vs. Illinois*, 94 U. S., 113, 134.

*Re-Arkansas Railroad Rates*, 168 Fed. Rep., 720.

*Madison vs. Madison Gas Company*, 139 Wis., 249.

A statement of the last two cases is given earlier in this brief.

We submit that if the case is not advanced for hearing or an injunction granted, that the case should be considered and formally determined upon the briefs filed.

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JOHN C. DONNELLY,
Attorneys for Plaintiff in Error.

WILLIAM L. CARPENTER,
P. J. M. HALLY,
BERNARD F. WEADOCK,
Of Counsel.

## STIPULATION.

IN THE SUPREME COURT OF THE UNITED STATES.

DETROIT UNITED RAILWAY,
a Corporation,
Plaintiff in Error,
vs.
CITY OF DETROIT,
a Municipal Corporation,
Defendant in Error.

No. 666.

IT IS HEREBY STIPULATED between counsel for the respective parties in the above entitled cause that upon the hearing of the motion made by the plaintiff to advance said cause for hearing on the docket of the October term, 1918, or for the granting of an injunction pending such hearing, that the report of Barclay Parsons & Klapp filed with the Railroad Commission of the City of Detroit, April, 1918, may be referred to or such parts or extracts therefrom as either side may deem material.

ELLIOTT G. STEVENSON and
JNO. C. DONNELLY,
*Attorneys for Plaintiff and Appellant.*

ALLAN H. FRASER,
*Attorney for Defendant and Appellee.*

## APPENDIX.

## EXTRACTS FROM REPORT OF BARCLAY PARSONS & KLAPP—APRIL, 1918.

**Different Rates of Fare Not Justified.**

Under the existing conditions the traffic interchange between the so-called Three-Cent and Five-Cent lines is so great that any physical separation would cause great inconvenience to the traveling public. The different rates of fare, too, are not justified, as under the present system three passengers starting from the same point on a Three-Cent line may utilize the system in the following manner:

1. A. may ride on a Three-Cent line to his place of employment and return by the same route, paying for the round trip 6¼ cents.

2. B. starting from the same point may ride on a Three-Cent car which terminates its trip over a special tripper route on a Five-Cent line. He will pay 3⅛ cents going to his work and 5 cents returning, a total for the round trip of 8⅛ cents.

3. C. using the Three-Cent line from the common starting point may transfer to a Five-Cent line, paying therefor five cents to secure a transfer and return in the same manner, making a total of ten cents per day.

Here we have three passengers riding the same distance, over the same kind of tracks and utilizing the same class of equipment, paying respectively, 6¼c, 8⅛c and 10c, for traveling the same round trip distance. From the standpoint of justice to the people who travel on the cars and

who pay the fares there is no reason that we can find from a careful analysis of the traffic demands, or the service rendered by the Company to warrant these wide and peculiar inequalities in fare in different districts and on interconnected routes. The fare should be uniform and the service brought up to a uniform standard on all lines. Such a program would eliminate any justification for the use of antiquated equipment on some of the lines which have now grown important enough to warrant larger and better cars.

**Possible Rates of Fare.**

A great many expedients are being tried in methods of fare collection to adjust the revenues of various electric railway companies in other parts of the country to meet the added cost of operation due to advances in cost of materials and labor, taxes, etc. The principal difficulty in fixing a new scale of rates is in correctly determining what will be the effect of a given change. Before August, 1913, the average fare was 4.37c, but today the same system of fares produces 4.55c. The probable explanation is that a much greater use of the transfer to and from the Three-Cent lines and the shifting of hours of labor so as to reduce the use of the Workingmen's Tickets has resulted from the development of the City during the past four or five years.

The seven tickets for 25c, good on all lines, was used by from 80 to 90% of the passengers on the Five-Cent lines and 70 to 75% on the Three-Cent lines.

Unfortunately this rate of fare is shown by our examination to be insufficient to meet the operating expenses and fixed charges of the Company under present war conditions.

A straight six tickets for 25c with full transfer privileges also does not promise a revenue quite sufficient to hope for its success at the present time.

**Six Tickets for 25c Without Transfer,**
**Five Cents for a Ride With a Transfer.**

As a means of making an equitable rate that would proportion to each passenger a payment commensurate with the service rendered, the adoption of the following rates is suggested as worthy of consideration:

*Six tickets for 25c, good for a continuous ride on any line in the City, without transfer, but to include the car-to-car transfer on the same line, such as the Fort East and West, etc.*

*Five cents to be charged for a single cash fare or for a ride, including a transfer to any other intersecting or connecting line.*

No other tickets or rates of fare to be used, the above being based upon the fact that passengers using a single direct route are the most easily and economically handled and that those requiring two sets of equipments by the use of two lines of cars should pay a different and higher rate of fare.

The arrangement should provide, of course, for the continuation of the direct tripper service to the factory districts with the consequent privilege of using the six tickets for 25c on these routes by workingmen.

An analysis of the use made of the various kinds of tickets now in vogue leads to the conclusion that the proposed charges would result in a lower fare than at present,

but higher than the seven tickets for 25c system. An equitable distribution of the burden would be obtained with no tendency, as at present, to crowd certain lines, or inducements to passengers to wait and increase the congestion of the rush hour period.

The transfers on the entire system, under the seven tickets for 25c system, amounted to from 38 to 40% of the revenue passengers. This will be reduced by the omission of car to car transfers to about 35% or possibly lower.

The general experience is that about 5% of the revenue passengers will pay single cash fares of five cents, which would leave the balance, or from 55 to 60%, to use the six tickets for 25c, under the proposed arrangement. This would mean an average fare of about 4.46c to 4.49c as against 4.55c to 4.56c fare, under the present rates.

As just pointed out the exact proportion in which these tickets and transfers will be used is, of course, very difficult to determine in advance, but that the above is approximately the result to be anticipated is our belief.

In the month of February, 1918, the following conditions existed as to the division of revenue passengers using the various classes of tickets under the rates of fare now in effect.

The Five-Cent lines carried 77% of the total City passengers, including transfers.

The Three-Cent lines carried 23% of the total City passengers, including transfers.

The Five-Cent lines carried 70% of the transfer passengers.

The Three-Cent lines carried 30% of the transfer passengers.

The fares in February were divided as follows:

| | Five-Cent lines. | Three-Cent lines. |
|---|---|---|
| 5c fares ..... | 85.22% | 43.86% |
| 8 for 25c (3.15)..... | 14.00% | 51.65% |
| 7 for 25c (3.57)..... | 0.67% | 0.42% |
| 6 for 25c (4.16)..... | .11% | 4.07% |
| | 100.00% | 100.00% |

On the whole City System the division was as follows:

**Three-Cent and Five-Cent Combined:**

| | |
|---|---|
| Five-Cent fares..... | 75.67% |
| 8 for 25c..... | 22.70% |
| 7 for 25c..... | .61% |
| 6 for 25c..... | 1.02% |

A comparison shows that the proposed method would equalize the fare among the riders so that instead of 75% of the riders paying five cents in order that the other 25% may ride for 3.12c, 60% would ride for 4.16c and the balance of 40% would pay five cents because they did not buy tickets or enjoy the use of two car lines.

(pages 33-34-35)

**Three-Cent and Five-Cent Lines Should not be Separated.**

As mentioned in another place, the perpetuation of the distinction between Three-Cent and Five-Cent lines is detrimental to good service. So varied and complicated have become the traveling routes of the people of Detroit that the Three-Cent lines are no longer distinct and separate carriers of passengers from their origin to destination.

Over 38% of the passengers of the entire City system transfer to another line and sometimes to a second line before reaching their destination. A large proportion of this transfer involves the Three-Cent lines, thus it is found that on the Crosstown lines (Forest and Warren avenues) over 80% of the passengers carried on this line transfer to or from other lines. The complication and diversity of this transfer movement is best illustrated by taking the Woodward avenue line in the downtown district. Between the Grand Circus and the river the Woodward avenue line delivers or receives 58,000 passengers daily by transfer to or from the intersecting or adjacent lines in this district. These 58,000 passengers are distributed into 92 different directions or transfer routes and of these a considerable number both in total passengers and in route directions are involved in the Three-Cent lines. The Three-Cent lines, as at present operated, also fail to accomplish their full purpose by reason of the fact that the Company is opposed, on account of the difference in fare, to extending these lines or to use the tracks of the Five-Cent lines except when absolutely necessary. In several cases extensions logically tributary to the Three-Cent lines have been connected on to a Five-Cent line with which the traffic relation is not close. In the interests of good service and the complete development of the street car system's usefulness some arrangement should be made for abolishing completely this distinction between the Three-Cent and Five-Cent lines which is a mere relic of the past competitive history of Detroit's street car struggle and has no present physical meaning or significance so far as the use of the system by the general public is concerned. The proposed rate of fare, six tickets for 25c, previously referred to, is intended to distribute among all the people in the City the benefit from the low fare of the Three-Cent lines instead of limiting this reduction to special localities.

(page 43)

# "DETROIT UNITED RAILWAY FINAL SUMMARY OF ROAD AND EQUIPMENT ACCOUNTS AS OF JANUARY 1, 1918.

| Account | Description | 3c Lines Total Reproduction 1918 | 3c Lines Total Present Value 1918 | 5c Lines Total Reproduction 1918 | 5c Lines Total Present Value 1918 |
|---|---|---|---|---|---|
| | **Way and Structures** | | | | |
| 501 | Engineering and Superintendence | $189,044 | $171,917 | $728,951 | $664,676 |
| 502 | Right of Way | 2,243 | 2,243 | 687,277 | 687,277 |
| 503 | Other Land | 243,371 | 243,371 | 1,586,664 | 1,586,664 |
| 404 | Miscellaneous Physical Property | 98,106 | 98,106 | 98,977 | 98,977 |
| 504 | Grading | 212,484 | 212,484 | 1,277,700 | 1,277,700 |
| 505 | Ballast | 250,891 | 223,016 | 1,056,586 | 956,195 |
| 506 | Ties | 145,183 | 127,395 | 401,698 | 341,578 |
| 507 | Rails, Rail Fastenings and Joints | 479,192 | 417,599 | 1,396,146 | 1,199,721 |
| 508 | Special Work | 279,374 | 219,201 | 699,062 | 561,348 |
| 510 | Track and Roadway Labor | 318,615 | 275,950 | 1,090,559 | 960,839 |
| 511 | Paving | 302,166 | 214,536 | 2,027,270 | 1,454,781 |
| 512 | Roadway Machinery and Tools | 10,463 | 8,212 | 76,069 | 70,340 |
| 515 | Bridges, Trestles and Culverts | 673 | 504 | 19,471 | 14,844 |
| 516 | Crossings, Fences and Signs | 35,396 | 32,128 | 36,838 | 33,439 |
| 517 | Signals and Interlocking Apparatus | 5,570 | 3,890 | 50,610 | 35,430 |
| 518 | Telephone and Telegraph Lines | . . . . | . . . . | 11,747 | 9,404 |
| 519 | Poles and Fixtures | 86,863 | 66,514 | 307,972 | 235,823 |
| 520 | Underground Conduits | 68 | 62 | 243 | 217 |
| 521 | Distribution System | 291,122 | 282,797 | 1,032,160 | 1,002,645 |
| 522 | General Office | 94,799 | 90,381 | 336,111 | 320,443 |
| 523 | Shops and Car Houses | 503,918 | 402,620 | 1,682,041 | 1,305,687 |
| 524 | Station and Miscellaneous Buildings | 103,424 | 94,590 | 366,687 | 335,366 |
| 525 | Wharves and Docks | 8,293 | 7,463 | 29,402 | 26,462 |
| 529 | Other Expenditures | 1,589 | 1,516 | 18,037 | 17,205 |

## DETROIT UNITED RAILWAY FINAL SUMMARY OF ROAD AND EQUIPMENT ACCOUNTS AS OF JANUARY 1, 1918—(Continued)

| | Account and Description | 3c Lines Total Reproduction 1918 | 3c Lines Total Present Value 1918 | 5c Lines Total Reproduction 1918 | 5c Lines Total Present Value 1918 |
|---|---|---|---|---|---|
| | **Equipment** | | | | |
| 530 | Passenger and Combination Cars | $694,500 | $534,033 | $3,806,602 | $3,089,211 |
| 531 | Freight, Express and Mail Cars | . . . . | . . . . | 5,981 | 5,382 |
| 532 | Service Equipment | 35,557 | 27,574 | 142,227 | 110,294 |
| 533 | Electric Equipment of Cars | 341,727 | 264,843 | 1,753,759 | 1,419,072 |
| 536 | Shop Equipment | 105,796 | 94,677 | 381,597 | 341,813 |
| 537 | Furniture | 12,354 | 10,504 | 43,804 | 37,240 |
| 538 | Miscellaneous Equipment | 16,107 | 12,177 | 57,854 | 43,751 |
| | Total | $1,206,041 | $943,808 | $8,191,824 | $5,046,763 |
| | **Power** | | | | |
| 539 | Power Plant Buildings | $115,234 | $102,222 | $408,559 | $362,424 |
| 540 | Substation Buildings | 12,352 | 11,543 | 43,794 | 40,926 |
| 542 | Power Plant Equipment | 303,833 | 198,392 | 1,077,227 | 703,392 |
| 543 | Substation Equipment | 71,292 | 60,706 | 252,759 | 215,229 |
| 544 | Transmission System | 29,401 | 27,894 | 104,239 | 98,897 |
| | Total | $532,112 | $400,757 | $1,886,578 | $1,420,868 |



DETROIT UNITED RAILWAY FINAL SUMMARY OF ROAD AND

## DETROIT UNITED RAILWAY FINAL SUMMARY OF ROAD AND EQUIPMENT ACCOUNTS AS OF JANUARY 1, 1918—(Continued)

| Account and Description | 3c Lines Total Reproduction 1918 | 3c Lines Total Present Value 1918 | 5c Lines Total Reproduction 1918 | 5c Lines Total Present Value 1918 |
|---|---|---|---|---|
| **General and Miscellaneous** | | | | |
| 545 Franchises (Cost of Obtaining) | $22,600 | $22,600 | $90,900 | $90,900 |
| 546 Law Expenditures | 3,407 | 3,407 | 23,731 | 23,731 |
| 547 Interest During Construction | 451,127 | 451,127 | 1,737,198 | 1,737,198 |
| 548 Injuries and Damages | 5,532 | 5,532 | 23,814 | 23,814 |
| 549 Taxes | 97,842 | 97,842 | 371,310 | 371,310 |
| 550 Miscellaneous | 111,657 | 111,657 | 373,812 | 373,812 |
| Total | $692,165 | $692,165 | $2,620,765 | $2,620,765 |
| **Summary of Principal Accounts** | | | | |
| Way and Structures | $3,662,847 | $3,196,475 | $15,018,278 | $13,197,061 |
| Equipment | 1,206,041 | 943,808 | 6,191,824 | 5,046,763 |
| Power | 532,112 | 400,757 | 1,886,578 | 1,420,868 |
| General and Miscellaneous | 692,165 | 692,165 | 2,620,765 | 2,620,765 |
| Material and Supplies | 189,210 | 189,210 | 746,755 | 746,755 |
| Working Capital | 54,530 | 54,530 | 218,120 | 218,120 |
| Total | $6,336,805 | $5,476,945 | $26,682,320 | $23,250,332 |
| Total—5c Lines | 26,682,320 | 23,250,332 | | |
| **Total Value D. U. R. Property in Detroit, January 1, 1918** | $33,019,125 | $28,727,277" | | |

(Pages 64 and 65)

**Summary of Professor Cooley's Appraisal Property of Detroit United Railway within the One Fare Zone in the City of Detroit.**

| | |
|---|---|
| Cost of reproduction | $26,562,535 |
| Cost of reproduction, less depreciation | 23,608,865 |
| Franchise Value | 6,105,214 |
| That gives a grand total, cost of reproduction | 32,667,749 |
| Cost of reproduction, less depreciation | 29,714,079 |

# IN THE
# SUPREME COURT OF THE UNITED STATES

| | |
|---|---|
| DETROIT UNITED RAILWAY, a corporation, Plaintiff in error, vs. CITY OF DETROIT, a municipal corporation, Defendant in error. | October Term, 1918. No. 666. |

## BRIEF IN OPPOSITION TO MOTION TO ADVANCE CASE OR GRANT INJUNCTION PENDING HEARING.

### Statement of Facts.

The statement of facts in the brief of plaintiff in error is considered wholly incomplete and insufficient. We believe a thorough understanding of the case requires another statement, which we herewith make, as follows:

The Detroit United Railway, plaintiff in error, owns and operates the entire street railway system in the City of Detroit. Upon some of the streets it has franchises, which were granted to it by said city but which have expired. On portions of streets it has franchises now in force which were granted to it by municipalities other than said city the territory of which is now within the territorial limits of the city. Upon some of the streets and portions thereof the railway company is operating its cars upon non-franchised territory, the franchises under which the railway

company entered thereon having long since expired.

The rate of fare for the carriage of passengers upon the lines where the franchises have expired was fixed in such franchises at the rate of five cents for a single passenger.

Subsequently workingmen's tickets, so-called, were provided and sold by the company eight for a quarter each of which entitled the pasenger during certain hours in the morning and evening to transportation over the lines of railway of the plaintiff.

This rate of fare had been in force for, to-wit, more than thirty years prior to August 7, 1913.

These rates of fare are the same as the rates of fare fixed in the ordinance here attacked except the provision requiring the company to sell six tickets for twenty-five cents, but the company is not now nor never has provided six tickets for twenty-five cents, so that it may be said that the rates of fare fixed in the ordinance were the same as those that had been in force for a period of to-wit more than thirty years prior to August 7, 1913.

Upon August 7, 1913, the rates of fare were reduced by agreement, which is more particularly referred to hereinafter.

When the franchises upon some of the plaintiff's lines of railway were about to expire, the city through its common council passed certain resolutions demanding from the company the payment of three hundred dollars a day for the occupation of the streets after November 9, 1909, that being the date upon which several of its franchises expired. The railway company replied to these resolutions denying that the city had the power to impose such a charge, but the company paid the rental, so-called, nevertheless and continued to pay it until August 7, 1913.

In 1910 when the franchise on Fort street was about to expire, the city passed similar resolutions demanding the payment of two hundred dollars per day for the occupation of Fort street by the railway company. To these resolutions the company replied that the imposing of this rental upon it was illegal and that its franchise upon said Fort street had not expired, that it would not pay such charge or rental. Suit was then brought by the city against the railway company to compel said company to pay said rental and to vacate with its lines of railway and other equipment said street. This litigation resulted in a decree being entered in the Supreme Court of the State of Michigan against the plaintiff company. In the decree it is provided that the common council of the city may by resolution order said railway company to cease the operation of its cars upon Fort street and to remove its railway equipment therefrom within ninety days, but such decree denies the city the right to impose or collect the rental so demanded (*City of Detroit vs. Detroit United Railway*, 172 Mich. 136). This decree was subsequently affirmed by the Supreme Court of the United States (229 U. S. 38-48).

When this litigation was concluded the plaintiff company paid the city seventy-five thousand dollars for its occupation of Fort street from the date of the expiration of its franchise until August 7, 1913.

On this last mentioned date a temporary agreement between the city and the railway company was effected whereby rental demands were suspended and in lieu thereof different rates of fare were inaugurated. The railway company provided and sold seven tickets for a quarter, each of which entitled the passenger to a ride upon any and all of the railway lines of the company within the City, with transfer privileges. Workingmen's tickets, so-called, were

also sold at the rate of eight tickets for a quarter, each of which was good for a single ride during certain hours in the morning and evening. A straight five cent fare, with transfer privileges, was also in force. In addition thereto the rates of fare upon the franchised or three-cent lines, so-called, continued as in the franchises provided.

On or about December 2, 1917, the plaintiff company arbitrarily and on its own act without consent of the City abrogated said temporary agreement and discontinued the sale of the seven tickets for a quarter and began to charge a straight five cent fare, however continuing to sell workingmen's tickets.

On or about August 8, 1918, the plaintiff company suddenly discontinued carrying passengers for a straight five cent fare upon its non-franchised lines and upon its five cent franchised lines and also discontinued the sale of workingmen's tickets and attempted arbitrarily without the consent of the City to establish and put in force in lieu thereof a different and higher rate of fare, to-wit, a straight six cent fare or ten tickets for fifty-five cents, each of which was good for a single ride, but did not disturb or change the rates of fare upon its three-cent franchised lines.

The attempted imposing of such rates of fare without any authority whatever upon the part of the company resulted in breaches of the peace upon the car lines of the plaintiff, where passengers in numerous instances refused to pay the increased rate. At different points upon the railway lines of the plaintiff company riots occurred and property was destroyed and citizens more or less injured.

In view of the situation thus arising the common council of defendant city adopted an ordinance, the terms and provisions of which are fully set forth in the bill of com-

plaint of the plaintiff filed herein. See plaintiff's bill of complaint, pages 41, 42. This ordinance has a two-fold purpose, first, it is designed to prohibit and prevent the plaintiff from charging an excessive rate of fare upon its five cent franchised and non-franchised lines of railway within said city. Second, to prevent and suppress disorders and breaches of the peace and to maintain and uphold law and order and to preserve and protect life and property.

Upon August 13, 1918, at a quarter past twelve o'clock midnight that being the date when the ordinance became effective, the city filed a bill of complaint in the Wayne Circuit Court in Chancery to restrain the railway company from charging or collecting any other rates of fare than those provided in the ordinance, upon plaintiff's lines of railway where its franchises had expired.

The plaintiff company on August 12, 1918 began this suit in the District Court of the United States for the Eastern District of Michigan, in which suit, according to its bill of complaint, it seeks to have said ordinance declared void because, as alleged, it impaired the obligations of the contracts of the railway company and also took its property without due process of law. At 9:30 o'clock a, m. August 13, 1918, Judge Tuttle of said District Court heard the matter and summarily entered an order dismissing the railway company's bill of complaint, and upon the same day filed a written opinion setting forth fully his reasons for such action. See pp. 198-202 plaintiff's bill of complaint.

The railway company immediately perfected an appeal to the United States Supreme Court from the decision of the said District Court.

The railway company then presented a petition to the Honorable William R. Day, one of the Associate Justices

of the Supreme Court of the United States, in which it set forth the action taken by the District Court upon its bill filed in said court as aforesaid, and prayed in said petition that the City be restrained and enjoined "(a) from enforcing or attempting to enforce any of the provisions of said ordinance adopted by the Common Council of the City of Detroit August 9, 1918, of which Exhibit 'X' attached to plaintiff's bill of complaint above herein referred to is a copy; (b) from interfering in any manner from the collection by the plaintiff company of the reasonable rates of fare established by it as of August 7, 1918, namely, a six cent cash fare or ten tickets for fifty-five cents with universal transfers over any and all of plaintiff company's lines." It also claimed and alleged, as it claimed and alleged in its bill of complaint, that by the passage of said ordinance its contract rights had been impaired, and that its property was taken without due process of law in violation of the federal constitution. It also in said petition claimed and alleged that the federal court had exclusive jurisdiction of the subject matter and parties to this suit, and that the commencement of the suit by the city in the Wayne Circuit Court, in Chancery, and the granting of the injunction herein was unauthorized and gave the said Wayne Circuit Court in Chancery no jurisdiction and was in violation of the rights of the railway company. Mr. Justice Day, acting upon said petition, issued an order directing the city to show cause at Canton, Ohio, on the 10th day of September, 1918, why the prayer of the petition so filed before him by the railway company should not be granted. To this petition the defendant city made full and complete answer, paragraph by paragraph, to which answer it now begs leave to refer. The matter was heard on the 10th day of September, 1918, upon said petition and answer by Mr. Justice Day, and upon the 12th day of Sep-

tember, 1918, said Justice entered an order denying the railway company the relief it sought and refused to grant an injunction.

On July 30, 1918, the common council of the defendant city directed the Corporation Counsel of said city to institute proceedings forthwith to secure a judgment of ouster against the Detroit United Railway, plaintiff in error herein, on the so-called non-franchised streets in the City of Detroit; that afterwards and upon August 9, 1918, the common council of defendant city also passed a resolution declaring that all right and title on the part of the railway company to franchises and tracks maintained in the non-franchised streets have terminated by limitation, and that the said railway company was occupying the streets of the city without either express or implied consent of the city; and further directed the Corporation Counsel to enforce the rights of the city and to repossess itself of said streets. This suit was instituted by the Corporation Counsel as the common council had directed him in these resolutions, and such suit is now pending in the Wayne Circuit Court in Chancery, State of Michigan and is undisposed of.

The plaintiff now moves this Court to advance the cause for hearing or grant an injunction pending the hearing upon the merits.

### Argument In Opposition To Motion To Advance the Hearing of the Cause.

It should be made to appear that there is a legal contract or contracts, the obligations of which have been impaired, before relief should be granted or this cause advanced or an injunction issued. The plaintiff has not shown such a contract or contracts. Its contracts have expired. The ordinance here attacked does not apply to any railway lines

of plaintiff except those that are non-franchised. In paragraph five of the ordinance it is unmistakably explicitly so declared. The requirement in the fourth section of the ordinances, which reads: "Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the charge to more than five cents or six tickets for twenty-five cents," is only a condition which the railway company is bound to observe if it continues to operate its cars on those non-franchised lines. It may escape the effect of this condition by discontinuing the operation of its cars upon streets where it has no rights. The plaintiff is not obliged or compelled to do anything under the ordinance; it is not compelled to operate its cars; neither is it required to render service to the public because of any contract obligation or other reason or consideration. As was said by Judge Tuttle in the lower court in his written opinion:

> "Here the plaintiff makes no claim that it is under duty, or that it possesses the right, to continue to operate its street cars upon what it refers to throughout its bill as the 'non-franchise' lines in the City.
>
> "It has in fact been decided by the United States Supreme Court that with the expiration of the franchises formerly held by this plaintiff the right of the latter to occupy streets of the City with its tracks, also expired.
>
> *"Detroit United Railway vs. City of Detroit,* 229 U. S. 39.
>
> "In declaring the status of the railway company the Court, in the case just cited, used the following language:
>
> " 'Nor do we find more force in the claim of an implied contract to permit the railway to remain in the streets under such reasonable arrangements for public service as the situation might require. The right to grant the use of the streets was in the city. It had exercised it, had fixed with agreement with the

railway the definite period at which such rights should end. At their expiration the rights thus definitely granted terminated by force of the terms of the instrument of grant. The railway took the several grants with knowledge of their duration, and has accepted and acted upon them with that fact clearly evidenced by written contract. The rights of the parties were thus fixed and cannot be enlarged by implication.' (Citing cases)."

In the interim between November 14, 1909 and August 7, 1913, the plaintiff company paid to the City for the use and occupation of the streets where these franchises formerly were in force, the sum of $300 a day. This was a condition which the company met by the payment. Now, then, the ordinance here in question, after all, imposes but a condition when it requires the carriage of pasengers over connecting lines for rates of fare therein provided.

The rates of fare fixed in the ordinance are the same as those that prevailed upon these lines for 30 years previous to August 7th, 1913, except that the company was not obliged to sell six tickets for twenty-five cents. The plaintiff company has not complied with this provision of the present ordinance and does not now and has not since its enactment sold six tickets for twenty-five cents because, no doubt, the plaintiff is aware that the ordinance in that respect cannot be enforced against it. For the reason the ordinance does not provide for the sale of such tickets on the cars or elsewhere.

The claim that the plaintiff makes at the bottom of page 16 of its brief herein is not borne out by the facts. The claim is: "The response of the Common Council to the recommendation of the War Labor Board was to adopt the ordinance complained of, on August 9, 1913, very greatly

reducing the rates of fare instead of increasing the same, as recommended." The rates of fare were not reduced by the ordinance lower than what they had been for a period of thirty years prior to August 7th, 1913. Subsequent to that date and up to December 2, 1917, the rates of fare were very much lower, in accordance with the "Day to Day" agreement or plan hereinbefore referred to—namely, they were then 7 tickets for a quarter.

The plaintiff has never since the expiration of its grants evidenced any willingness or desire or intention of leaving the streets and taking with it its railway equipment, but has ever since the expiring of its franchises insisted that it has certain rights in the streets, intangible and indefinite though they be, and that it discharges to the public by the operation of its cars a duty which it owes and a responsibility which it cannot evade. This has been all along the attitude of the plaintiff notwithstanding the decisions of the courts to the contrary, as shown in *City of Detroit vs. Detroit United Ry.*, 172 Mich. 136 and *Detroit United Ry. vs. City of Detroit*, 229 U. S. 39.

These claims and the plaintiff's attitude with respect to its rights in the streets led the Common Council to adopt the resolution of July 30, 1918, directing the Corporation Counsel to institute in the courts ouster proceedings against the plaintiff.

## Argument in Opposition to Granting An Injunction.

The plaintiff in error is not entitled to an injunction against the defendant city from enforcing the provisions of the ordinance adopted by the common council of the city August 9, 1918.

It does not appear that the plaintiff is losing money or does not receive a fair return upon its railway property within and upon the streets where its franchises have expired.

The figures set forth in plaintiff's brief at pages 13 and 14 showing the alleged value of the property, operating expenses, net returns, increased payroll and depreciation affect all of the plaintiff's property within the one fare zone of the city of Detroit.

If these figures were accurate, the accuracy of which is challenged herein, the method by which they are arrived at is wrong because the properties of the plaintiff should be segregated, that is to say: the property to which the terms of this ordinance apply, being the non-franchised lines, should be separated from the property of the franchised lines within the city before it can be said that the plaintiff is operating its non-franchised lines at a loss under the rate of fare prescribed in the ordinance even though we take plaintiff's valuation as correct.

The plaintiff assumes that all of its property within the one fare zone of the city is worth $33,633,433, without depreciation and with depreciation deducted, $29,977,369. This valuation the defendant city is ready to show is far in excess of the true and actual worth of the property, when given an opportunity in a court of justice.

In 1915 Professor Cooley appraised all of the property of the plaintiff within the one fare zone and found its valuation to be $23,609,765, being alleged claims of cost of reproduction less depreciation.

On January 1, 1918, Barclay, Parsons & Clapp fixed the value of plaintiff's property at $23,250,252. This appraisal was largely a copy of Professor Cooley's appraisal of January 1, 1915. In Professor Cooley's appraisal there is included something over $5,000,000 for franchise values on the property of the plaintiff within the one fare zone of the city.

There is no such thing as franchise values any longer. Franchises, according to the showing made by the plaintiff in this suit, are liabilities and not assets.

The plaintiff claims it is operating its 3-cent lines—franchised—at a loss to-wit of $250,000 a year. It is also claimed it is operating its 5-cent franchised lines at a loss, and has sought to have the Courts sanction an increase in these rates from fifteen to twenty per cent and more, and to set aside these franchises or contracts because plaintiff cannot carry passengers for the rates fixed in its contracts and make profits.

On December 2, 1917 the plaintiff company abrogated the "Day to Day" agreement which provided for the sale of 7 tickets for 25c, each good for a single ride, and commenced to charge a straight 5c fare on the non-franchised and franchised 5c lines, so-called, effecting an increase of 40%.

On or about August 8, 1918 plaintiff again jumped the fare from a 5c fare to a straight 6c fare or 10 tickets for 55c, effecting increases of 20% and 10%, respectively.

By proposing 10 tickets for 55c or 6c for a single ride, the plaintiff attempted to establish and enforce on August

8, 1918 increased rates of fare of 54% and 68%, respectively, above that which had been in force previous to December 2, 1917 for a period of over 4 years.

The conduct of the plaintiff with reference to jumping or increasing its fares without authority upon its lines of railway within the city with such rapidity and with such frequency caused the riots and breaches of the peace which are mentioned in the statement of facts above, and it was as much to control this situation and prevent riots, disorders and breaches of the peace as it was to prohibit the plaintiff from charging excessive and unjustifiable rates, that the ordinance was adopted.

The ordinance, if unreasonable with reference to the rates of fare, may be declared so by the Courts, but the true or actual value of the plaintiff's property should be established first before this is done.

The city maintains that these rates of fare produce great returns upon the actual value of the property used in the railway system in Detroit on the now franchise lines; that appraisals of the plaintiff's property have been made by Engineers in the last few years, as follows:

Barcroft appraisal in the year 1909, $11,121,724.86.

Bemis appraisal in the year 1913, approximately $18,000,000.

Cooley appraisal in the year 1915, $23,609,765.00.

Barclay, Parsons & Clapp appraisal, January 1, 1918, $23,250,252.00.

Cooley appraisal extended by Rifenberick, Consulting Engineer in the employ of plaintiff, $33,633,433, without depreciation; and with depreciation, $29,977,367, included in which appraisals on franchise value of many millions.

The figures with reference to the valuation of the plaintiff's property tend rather to obscure and confuse the actual worth of plaintiff's property than to make clear and establish its true and actual worth.

## The Ordinance is a Valid Legislative Measure.

There can be no doubt that under the Constitution of Micigan, the Home Rule Bill, so-called, (Act 279 Public Acts of 1909) and amendments passed by the Legislature of Michign, and the provisions of the City Charter of Detroit adopted by the City, confer upon the Common Council of the City plenary and ample powers to pass and adopt the ordinance in question. The Michigan constitutional provision reads:

> Section 28, Article VIII:
>
> "No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any city, village or township for wires, poles, pipes, tracks or conduits, without the consent of the duly contituted authorities of such city, village or township; nor to transact a local business therein without first obtaining a franchise therefor from such city, village or township. The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships."

Act. No. 279 Public Acts of 1909, as amended, provides:

> Section 4. "Each city may in its charter provide * * *
>
> (g) For the use, regulation and control of the surface of its streets, and of the space above and beneath them."

Under Title VII of the Charter of the City of Detroit adopted June 25, 1918, it is provided:

Section 1. "The common council shall have the general control of all persons, partnerships, associations, or corporations operating within the city any public utility on, above or beneath the surface of the highways, streets, alleys or other public places for wires, poles, pipes, tracks or conduits."

Section 2. "The council may fix and establish by ordinance, rates of fares and charges which may be exacted and received by such persons, partnerships, associations, or corporations, for any service rendered or commodity sold by them in the course of such public utility business within the city limits. The fixing of rates and charges hereunder shall not confer upon any such person, partnership, association or corporation, any right whatever in the streets, alleys or highways of the city."

From this constitutional provision, legislative enactment, and charter provisions, legislative power, full and complete, is delegated to the Common Council of defendant City to pass and adopt said ordinance.

The plaintiff is at liberty to operate its cars upon its non-franchised lines under the terms of this ordinance and if those terms are too burdensome, then the plaintiff may with impunity stop the operation of its cars and remove its property from the streets. But so long as it operates its cars upon its non-franchised lines within said city it is bound to observe and comply with the terms of this ordinance.

The franchises in the streets where this ordinance is made applicable have expired, and the plaintiff is occupying the streets as a continuing trespasser. It was so held in *City of Detroit vs. Detroit United Railway*, 172 Mich., page 136.

**So Long as the Defendant Permits Its Property to Remain in the Streets It Must Submit to Public Control.**

In the case of *City of Kalamazoo vs. Kalamazoo Circuit Judge,* 166 N. W., page 998, it was said by the Court at page 1001:

> "It cannot be doubted that, where the owner of property devotes it to a use in which the public has an interest, he submits it to the extent of that interest to public control, and where the property is devoted to a public use and is charged with such public interest the state in the interest of the public, may prescribe reasonable rates for such public use. *Munn vs. Illinois,* 94 U. S. 113, 24 L. Ed. 77. But, except by contract, the fixing of rates is a governmental legislative function. Section 419, *Pond on Public Utilities;* section 1325, *Dillon on Municipal Corporations* (5th Ed.); *Home Telephone Co. vs. Los Angeles,* 211 U. S. 265, 29 Sup. Ct. 50, 53 L. Ed. 176. It may be delegated to the municipality. *Home Telephone Co. vs. City of Los Angeles* (C. C.) 155 Fed. 554, and authorities hereinafter considered."

In *Munn vs. People of Illinois,* 94 U. S. Sup. Ct. at page 113, Mr. Justice Waite said:

> "Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."

It may be contended on the part of the defendant that the Michigan Legislature has not granted to the City of

Detroit the power to fix rates such as those embodied in the ordinance, but it should be borne in mind that the legislative provision, above quoted, delegates to the City power to "regulate and control" the streets, which are very significant and comprehensive terms.

Mr. Justice Brewer in the case of *City of St. Louis vs. Western Union Telegraph Co.*, 149 U. S. at page 467, said:

> "Obviously, the intent and scope of this charter are to vest in the city a very enlarged control over public property and property devoted to public uses within the territorial limits.
>
> "It is given power to open and establish streets, to improve them as it sees fit, and to regulate their use, paying for all this out of its own funds. The word 'regulate' is one of broad import. It is the word used in the Federal Constitution to define the power of Congress over foreign and interstate commerce, and he who reads the many opinions of this court will perceive how broad and comprehensive it has been held to be. If the city gives a right to the use of the streets or public grounds, as it did by ordinance No. 11,604, it simply regulates the use when it prescribes the terms and conditions upon which they shall be used. If it should see fit to construct an expensive boulevard in the city, and then limit the use to vehicles of a certain kind or exact a toll from all who use it, would that be other than a regulation of the use? And so it is only a matter of regulation of use when the city grants to the telegraph company the right to use exclusively a portion of the street, on condition of contributing something towards the expense it has been to in opening and improving the street. Unless, therefore, the telegraph company has some superior right which excludes it from subjection to this control on the part of the city over the streets, it would seem that the power to require payment of some reasonable sum for the exclusive use of a portion of the streets was within the grant of power to regulate the use."

An injunction should not be granted until the value of the plaintiff's property used on its non-franchised lines in the city has been ascertained and established; and this ordinance should not be declared void until it is demonstrated that the plaintiff does not receive a fair return upon the value of its property in use on its non-franchised lines according to its true and actual worth.

The rates of fare fixed in the ordinance may be assumed to be reasonable in the light of practice, application and experience. For more than thirty years and for nearly fifty years these rates have prevailed upon these lines except at some period during that time they heen lower, but never higher.

The non-franchised lines are upon portions of streets where the greatest revenue of the railway company is derived. These lines of railway form the terminal for the plaintiff's interurban railway system, comprising as it does between five and six hundred miles, and are of great value to it on that account, although it pays the city nothing for these terminal facilities and privileges.

We have attached hereto copy of part of the last page of the Cooley appraisal of the plaintiff's property which is on file in the office of the Railroad Commission of Michigan at Lansing and which shows that the value of the franchises on the city lines was fixed in the appraisal at $5,133,387.

ALLAN H. FRAZER,
*Attorney for defendant City.*

RICHARD I. LAWSON,
*Of Counsel.*

# D. U. R. APPRAISAL.

## Condensed Summary and Analysis.
## Valuation as of January 1, 1915.
## By Mortimer E. Cooly.

| | COST REPRO. NEW. | C. OF REP. LESS DEP. | FRAN. VALUE | C. R. | P. V. | TOTAL TRACK. |
|---|---|---|---|---|---|---|
| D. M. & T. S. DIV. | 3,792,218 | 3,431,997 | 1,260,281 | 5,052,499 | 4,692,278 | 79.006 |
| D. J. & C. DIV. | 3,846,060 | 3,336,869 | 185,534 | 3,660,526 | 3,151,335 | 108.697 |
| RAPID RY. DIV. | 5,107,038 | 4,502,446 | 297,870 | 4,809,168 | 4,204,576 | 135.837 |
| D. U. R. INTER-URBAN LINES | 8,492,949 | 7,583,924 | 922,197 | 9,415,146 | 8,506,121 | 231.754 |
| D. U. R. ENTIRE SYSTEM IN U. S. | 46,817,827 | 41,535,237 | 7,799,269 | 54,617,096 | 49,334,506 | 786.004 |

Note: The above shows the claimed value of Franchises on all lines within city of Detroit is $5,133,387.

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# SUPREME COURT OF THE UNITED STATES.

October Term.

No. 666.

DETROIT UNITED RAILWAY,
*Appellant,*

*vs.*

CITY OF DETROIT.
*Appellee.*

## BRIEF ON BEHALF OF APPELLANT.

The plaintiff on August 12, 1918, filed its Bill of Complaint in the Court below asking that an Ordinance adopted by the Common Council of the City of Detroit August 9th, 1918, approved by the Mayor and published in the official paper of the City, be declared invalid and its enforcement enjoined.

The Court fixed the opening of Court on August 13, 1918, as the time for hearing plaintiff's application for a temporary injunction in accordance with the prayer of its Bill, and at that time Counsel for the respective parties

appeared and the Court after hearing Counsel for Plaintiff, upon its own motion dismissed such Bill of Complaint in effect for want of jurisdiction of the Court, and from the decree dismissing such Bill of Complaint the plaintiff appealed.

Two questions are involved in the determination of this case:

(a) Does it appear by the allegations made in the plaintiff's bill of complaint filed in the court below that the ordinance complained of, Exhibit X (Rec. p. 110), attached to said bill, impairs the obligations of contracts, to-wit, franchises, owned by the plaintiff at the time of the filing of such bill, in violation of Section 10 of Article One of the Constitution of the United States?

(b) Do the allegations of said bill of complaint show that the provisions of said ordinance would result in taking plaintiff's property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States?

## STATEMENT OF FACTS.

The plaintiff company at the time of the filing of its bill of complaint in the court below was the owner of and operated two hundred and seventy (270) miles of street railway within the territorial limits of the City of Detroit. A portion of such lines of railway, they operated under the provisions of unexpired franchises—some granted by the City of Detroit and others by municipalities that adjoined the City of Detroit which were subsequently brought within the territorial limits of the City of Detroit by the extension of its boundaries, and as to other portions—the larger portion in mileage of tracks—the plaintiff company operated without any franchises, with the consent of the City—having had franchises granted by the City which had expired some years before.

The former lines are referred to in the bill of complaint as "franchise lines" and the latter as "non-franchise lines."

From August 7, 1913, to December 1, 1917, the larger portion of plaintiff's street railway system was operated under a so-called "Day to Day Agreement" entered into between the plaintiff and the City, by the terms of which the rates of fare fixed were a cash fare of five cents or the sale of seven tickets for a quarter and tickets sold eight for a quarter, good for one and one-half hours in the morning and one hour in the evening, with universal transfers granted either upon such cash fare or tickets over its entire system. The provisions of such "Day to Day Agreement" provided that either party might withdraw therefrom at any time, and on December 1, 1917, owing to the

increased cost of operation of its street railway system, the plaintiff withdrew from such agreement and established rates of fare of five cents eliminating the seven for a quarter tickets, but continuing the sale of tickets eight for a quarter, good for one and one-half hours in the morning and one hour in the evening, and also continuing the granting of universal transfers over its entire system. This condition as to rates of fare continued without objection upon the part of the City down to August 7, 1918.

In May of 1918, the employes of the plaintiff company operating its system of street railway, made a demand for increased compensation and changes in operating rules and schedules that would very largely increase the company's cost of operation.

Inasmuch as the increased cost of operation growing out of war conditions rendered it impossible for the plaintiff to accede to this demand based upon its then available income, the company declined to grant the increase demanded, whereupon its employes left its employment on a strike and thereby prevented the plaintiff company from continuing the operation of its railway system.

The industrial plants of the City of Detroit were largely employed in manufacturing products of various kinds for the United States Government needful for its purposes in prosecuting the War it is engaged in, and stoppage of the operation of plaintiff company's street railway system interrupted the production of such products so required by the Government for such purpose and for this reason the Labor Department of the United States, by its representatives acting under the authority and by the direction of the President of the United States, intervened to procure

the resumption of the operation of plaintiff company's lines of street railway, so that the thousands of workmen employed in the production of products required by the Government for war purposes, which had been interrupted by the strike of such employes preventing the operation of its lines of street railway, might be able to resume their employment in the production of such war necessities.

That as a result of such intervention, it was agreed between plaintiff company and the striking employes then out on such strike, that they should return to their work and the question of compliance with their demands for increased wages, and changes in rules of operation and of schedules should be referred to the War Labor Board of the United States for arbitration and determination.

That in pursuance of such arbitration agreement, the said War Labor Board, under the presidency of Ex-President Honorable William H. Taft, held meetings on May 27th, 1918, at Chicago, Illinois, and June 28 to July 3, 1918, inclusive, at Washington, D. C., at which meetings the Mayor and Corporation Counsel of the City of Detroit appeared before said Board and asked leave to intervene to represent the interests of the City of Detroit and its people, and such leave being granted, said Mayor and Corporation Counsel did participate in such hearings.

That a full and exhaustive hearing was conducted by said War Labor Board and the needs of the employes of plaintiff company as to compensation and the ability of plaintiff company from its available income to provide for such needs, was fully and carefully presented, and after such hearing the matter was taken under consideration by said Board and later, on or about August 1, 1918, it

made its award. The "Financial Recommendation" contained therein was as follows:

> "This award increases the maximum rate in Detroit from 40c an hour to 48c an hour. The increase is substantial, but required by the increased cost of living and is fair. Other changes in working conditions more favorable to the men will normally add to the wage cost. The fares allowed to the Detroit Railway are exceptionally low, being 3c a passenger on some lines, 4c on others and 5c on others. They should *all* be raised to meet the increased operating cost due to the high prices of needed material and equipment and the increased pay herein awarded.
>
> We make part of this award the words we have used in the Cleveland case:
>
> 'We have recommended to the President that special Congressional Legislation be enacted to enable some executive agency of the Federal Government to consider the very perilous financial condition of this and other electric street railways of the country, and raise fares in each case in which the circumstances require it. We believe it to be a war necessity justifying federal interference. Should this be deemed unwise, however, *we urge upon the local authorities and the people of the locality the pressing need for such an increase adequate to meet the added cost of operation.*
>
> * * * In justice, the public should pay an adequate war compensation for a service which cannot be rendered except for war prices. The credit of these companies in floating bonds is gone. Their ability to borrow on short notes is most limited. In the face of added expenses which this and other awards of needed and fair compensation to their employes will involve, such credit will completely disappear. Bankruptcy, receiverships and demoralization, with failure of service, must be the result. Hence our *urgent* recommendation on this head'."
>
> (R. pp. 20, 21, 25 and 26.)

The award of the War Labor Board imposed upon the plaintiff company an additional financial burden amounting, approximately, to $2,000,000 per annum, or, to be exact, according to the allegations of plaintiff's bill (par. 25; R. p. 32) $944,997.65 for six months.

The award of the War Labor Board was made retroactive and effective as of June 1, 1918 and was brought to the attention of the Mayor and Common Council of the City of Detroit by a communication addressed to the Mayor by the President of the plaintiff company under date of August 2, 1918, which is set forth at pages 27 and 28 of the Record, and this communication directly called the attention of the Mayor and Common Council to the fact that the War Labor Board had increased the financial burdens of the plaintiff company by increasing the compensation of its employes, changing the operating regulations and schedules, etc., to the extent of $2,000,000 per annum and to the further fact that said War Labor Board found that the rates of fare in effect, were *all* inadequate.

The Common Council disposed of the matter by a resolution, the first sentence of which was as follows:

> "Resolved, that the petition of the Detroit United Railway that it be permitted to advance rates of fare on the Detroit Railway lines be and it is hereby denied." (R. 27-28)

Inasmuch as it was ascertained upon investigation that the expenses of the plaintiff company in operating its street railway system to serve the needs of the people of the City of Detroit would absorb substantially all of the income of the Company (see Exhibit 600, R. p. 40) without making provision for any return upon the value of its property employed in rendering such service, plaintiff on August 7, 1918, established a schedule of fares to become effective on August 8th, as follows: Single cash fare 6c or 10 tickets for 55c, either the cash fare or ticket being

good on any connecting or intersecting line within the limits of the City of Detroit. (The fares on the so-called 3-cent lines described in Ex. D, R. pp. 157-194, were not changed.)

Two days later, on August 9, 1918, a special meeting of the Common Council was convened, at which meeting the ordinance (Exhibit X, R. pp. 110-111) complained of was enacted by the unanimous vote of the members of said Common Council, fixing the rates of fare as follows: Single cash fare five cents or 6 tickets for 25c or 8 tickets for 25c, good for one and one-half hours in the morning and one hour in the evening, with universal transfers either upon such cash fare or upon such tickets.

This ordinance was approved by the Mayor on August 10 and on Monday, August 12, was published in the official paper of the city and under the provisions of the charter of the City of Detroit, without any other or further act upon the part of the city or any of its officers and agents, would become effective one day after such publication, to-wit, on August 13, 1918.

Two provisions of this ordinance, Sections 4 and 5, present the principal questions in controversy with reference to its construction, and are as follows:

> "Sec. 4. Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for twenty-five cents.
>
> Sec. 5. A continuous trip means one journey from point to point within the city, whether the same is made upon one car or one line or by means of transferring from car to car or from line to line. Each such person, partnership or corporation, and the officers, agents, servants and employes thereof, shall, upon demand, furnish proper transfers to carry into effect the provisions of this section. The provisions of this ordinance shall not be construed

as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract."

Of the numerous contracts—franchises—granted by municipalities adjoining the City of Detroit before the same became a part of the City of Detroit by the extension of the city's boundaries, two may be referred to as typifying the situation affected by such ordinance as to the question of impairment of contract rights raised by the allegations of plaintiff's bill of complaint, as follows:

On May 16, 1905, the Village of Fairview existed as a municipal corporation created by Act of the Legislature of the State of Michigan, and embraced both sides of Jefferson Avenue from the Waterworks easterly to Cadieux Road and on that day, by its Board of Trustees, granted a franchise to plaintiff authorizing it to construct, operate and maintain a street railway on Jefferson Avenue within said limits for a period of thirty years—until May 16, 1935—and to collect a "rate of fare for a single ride for a continuous trip for any distance in one direction on said Jefferson Avenue *within the Village of Fairview*" of five cents and there was no provision for transfers or tickets of any kind. (See Exhibit D, R. pp. 115, 116, 117.)

Subsequently and in 1907, the territorial limits of the City of Detroit were extended on both sides of Jefferson Avenue Easterly to the so-called Alter Road within said Village of Fairview, a distance of three miles.

On October 27, 1890, the northerly territorial limit of the City of Detroit on Woodward Avenue in said city was Pallister Avenue. By act of the Legislature of the State of Michigan enacted in 1899, the Village of Highland Park was created out of the territory that had been theretofore

within the Townships of Greenfield and Hamtramck, adjoining the City of Detroit. The northerly limit of said Highland Park on Woodward Avenue was the Six Mile Road and the Southerly limit was Pallister Avenue.

On October 27, 1890, the Village of Highland Park enacted an ordinance granting a franchise to plaintiff's grantor to construct, operate and maintain for a period of thirty years (until October 27, 1920) a street railway on Woodward Avenue within said Village of Highland Park from the Southerly limit—Pallister Avenue—to the Northerly limit—the Six Mile Road—and to charge each passenger carried over such line—*within such village limits, in either direction*, a five cent fare without any transfer privilege.

Section 4 of the ordinance granting such franchise relating to rate of fare, provided:

> "The rate of fare for a single trip shall not exceed five cents for any distance *within the corporate limits of the village;* the payment of such fare shall entitle the passenger to a continuous ride from any point on said railway *within the village limits.*"
> (See ordinance Exhibit G., R. pp. 121, 122, 123.)

Woodward Avenue in the City of Detroit extends from the river northerly and practically divides the city—the population on the East side thereof and the population on the West side thereof being approximately the same.

Jefferson Avenue runs nearly at right angles with Woodward Avenue, crossing it at a point near the river and extending Easterly and Westerly of Woodward Avenue.

The City of Detroit, in August, 1918, had a population exceeding 750,000 and this population was distributed over all sections and parts thereof. The city was essenti-

ally an industrial city—very much the largest part of its male population being employed and engaged in its great industrial plants and factories operated within the city limits and adjacent thereto and largely located at the outskirts of the city and for the most part remote from the residences of the persons employed in such plants and factories, thus necessitating the transportation of the employes of said plants and factories to and from their homes to their places of business.

Plaintiff's street railway system was substantially the only means of transportation for such employes to and from their homes to the place of their employment and interruption of any portion of plaintiff company's entire street railway system as a single unit for such transportation or the separation of the franchise lines from the so-called non-franchise lines, would paralyze the industrial and business life of the city and throw thousands of its residents out of employment and shut down its industrial plants and factories and it would be impossible to serve the transportation needs of the residents of the City of Detroit by the separation of the operation or the discontinuance of the operation of either the so-called franchise lines or the so-called non-franchise lines.

(See Par. 25, 26, 27 of plaintiff's bill of complaint, p. 18 of the Record.)

The value of the plaintiff company's property employed in the operation of its street railway system within the limits of the City of Detroit necessary to the operation of the same and necessary to be employed to serve the needs of the people resident within the city, amounts to $33,523,523 (Par. 29, R. p. 19).

That the application of the rates of fare fixed by the ordinance complained of, Exhibit X, in connection with

the increased compensation of plaintiff's employes and changes in operating regulations and schedules fixed by the award of the War Labor Board, based upon the actual business transacted by the plaintiff's company over its entire railway system within the City of Detroit from January 1, 1918, to July 1, 1918, would have produced the following results:

"DETROIT UNITED RAILWAY.

**Income Account of the Lines of the Company Located in the City of Detroit for the Six Months Ending June 30, 1918.**

Adjusted in respect of the terms of the Ordinance, passed by the City Council of Detroit on August 9, 1918.

| | | |
|---|---|---|
| Gross Revenue | | $5,545,344.03 |
| Deduct: | | |
| Operating Expenses | $4,763,738.99 | |
| Taxes | 276,772.84 | |
| Increase in Pay Rolls necessary to give effect to award of War Labor Board, together with proportionate increase to employees in other departments | 952,608.59 | |
| Depreciation | 251,907.12 | 6,245,027.54 |
| Deficit before considering interest charges or other return on the investment | | $ 699,683.51 |

Note—Interest at 6 per cent on the value of the physical properties in the City of Detroit would amount for the six months ending June 30, 1918, to $1,005,702.64."

(Exhibit 500, R. 41)

## SPECIFICATION OF ERROR.

The Court below erred in dismissing the plaintiff's Bill of Complaint for the reason that it stated a case conferring jurisdiction upon such Court to hear and determine the matters involved, and entitled the plaintiff to the relief prayed for therein.

## ARGUMENT.

The plaintiff's bill of complaint having been dismissed upon the Court's motion, we assume that in this court the decree of the court below will be considered as though it had been entered upon a motion made by the defendant to dismiss for want of jurisdiction or for want of equity, and that therefore the allegations of such bill will be taken as admitted.

**Did the ordinance complained of impair the obligation of plaintiff's contractual rights under the ordinances granted to it and its assignors?**

In the discussion of this question, we shall only refer to two of the many ordinances attached to the plaintiff's bill of complaint and made a part of it, namely the so-called Fairview and Highland Park ordinances, the provisions of which, relating to rates of fare, are set out above herein at page ....

Under the provisions of the Fairview ordinance, plaintiff company was entitled to collect from each passenger entering its cars between what was the westerly limit of the Village of Fairview at the time the ordinance referred to was enacted, and the Alter Road, the present territorial limit of the City of Detroit on Jefferson Avenue, a distance of three miles, *five cents,* without any modified fare by sale of tickets or transfers. The same was true of the ordinance granted by the Village of Highland Park covering the portion of the plaintiff's railway system on Woodward Avenue between Pallister Avenue and Webb Avenue on the West and Woodland Avenue on the East, a distance of two miles, so that the plaintiff company was entitled to collect from a passenger entering its cars on Woodward Avenue between Pallister Avenue and Webb Avenue and destined for a point between what was the westerly limit of the Village of Fairview and Alter Road, *ten cents,* without taking into consideration anything for the carriage of such passenger over the intervening tracks several miles in length included in the so-called non-franchise lines of the Company.

By the provisions of Section 4 of the ordinance complained of, this contractural right was limited to the collection of a five cent cash fare or a ticket to be sold six for twenty-five cents, the equivalent of a cash fare of 4 1/6c. Section 4 referred to expressly provides:

> "Sec. 4. Where a trip is over two or more lines, *whether franchise lines or not,* the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for twenty-five cents."

Section 1 provides:

> No * * * corporation operating a street railway on the streets of the City of Detroit, for the carriage of passengers for hire, shall charge more

than five cents for a single ride, or six tickets for twenty-five cents, per person *for one continuous trip* within the city over any line which is now operated *or shall hereafter be operated* without a franchise fixing the rate of fare."

And Section 5 provides:

"*A continuous trip* means one journey from point to point within the city, whether the same is made upon one car or one line or by means of transferring from car to car or from line to line. Each * * * corporation and the officers, agents, servants and employes thereof, shall, upon demand, furnish proper transfers to carry into effect the provisions of this section."

And Section 3 provides:

"Between the hours of five and five-thirty a. m. and four-forty-five and five-forty-five p. m., tickets in strips of eight for twenty-five cents shall be sold on all cars on all lines except where such sale would be contrary to the terms of a franchise contract, which tickets *shall entitle the holder to the same rights between said hours as the payment of a five cent fare would.*"

But it is contended that the provisions referred to are qualified and modified by the pretended exception contained in Section 5 as follows:

"The provisions of this ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract."

The learned District Judge in his written opinion filed in the case, construing these several provisions together, said:

"I think that the meaning of the language of Section 4 quoted is that where one trip on a line begins on franchise territory and ends on non-franchise territory, *or vice versa*, the total fare for

such trip must not exceed the sum mentioned and that if the plaintiff charges that amount (the maximum under any of its franchises) for the portion of such trip lying within franchise territory, *in such case it cannot charge any fare for the portion of the trip lying within the non-franchise territory.* It is, of course, entirely within the power of the City to prescribe such a condition for the privilege of using the non-franchise territory in carrying a passenger on such a trip, and the result is that the ordinance applies only to the non-franchise lines."

This construction would compel the plaintiff company to give any passenger demanding it, upon entering any of its cars on a non-franchise line and paying either a cash fare of five cents or a ticket purchased six for twenty-five cents and during the hours specified a ticket purchased eight for twenty-five cents, a transfer to a franchise line: for instance, over the Fairview line or the Highland Park line, and thus compel it to carry a passenger over the franchise line within Fairview or Highland Park without any compensation. On the other hand a passenger entering upon any of the plaintiff company's cars within the Village of Fairview or the Village of Highland Park, and tendering a fare of five cents, would be entitled to demand a transfer to any non-franchise line or lines within the city without any compensation.

Of course, it cannot be said that any claim of *"impairment of contractual rights"* could be based upon fares fixed relating exclusively to non-franchise lines but it would seem clear that there could be no more successful way of confiscating plaintiff company's property than to provide that it must carry over its non-franchise lines passengers who entered upon its franchise lines without any compensation therefor whatever. Section 4 of the ordinance referred to makes the tender of a ticket purchased at the rate of six tickets for twenty-five cents the equiva-

lent of a cash fare of five cents; so that upon the tender of such a ticket on entering a car upon a non-franchise line, the passenger would have a right to demand a transfer to a franchise line where the fixed rate of fare was five cents *within such franchise territory* and without any transfer privilege.

The plaintiff alleges in its bill that it was the intention of the City of Detroit in enacting this ordinance to prevent the plaintiff company from enforcing the provisions of its unexpired franchises. We submit that such intention is clearly manifest by the provisions of the ordinance itself, for how could the thousands of people traveling over the plaintiff company's lines of railway every day, or even the plaintiff's employes be expected to, know at what point a non-franchise line ended and a franchise line commenced or at what point a franchise line ended and a non-franchise line commenced? The natural result of such a situation would be for all persons entering cars to demand, as was done, the right to travel *anywhere within the city* for the rates of fare fixed by the provisions of the ordinance complained of.

To recognize the construction adopted by the learned Judge—in construing the entire ordinance in connection with the pretended exception referred to in paragraph 5—would result in holding that the provisions that "this ordinance shall not be construed as an attempt to impair the obligation of any valid contract but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract" would require the street car traffic upon plaintiff's railway system to be carried upon the rates of fare fixed by such ordinance, except where forbidden by valid contract; that is to say, plaintiff company

must carry passengers on a continuous trip on one journey within the city, whether same is made upon one car or one line or by means of transferring from car to car and from line to line, or whether the lines are franchise or non-franchise lines, for a maximum fare of five cents or six tickets for twenty-five cents, or for eight tickets for twenty-five cents except where this is forbidden by valid contract.

For violation of the provisions of this ordinance, the managing officers or employes of the plaintiff company were subject to a fine of five hundred dollars or imprisonment in the Detroit House of Correction for ninety days, or to both such fine and imprisonment (section 6) and the ordinance was given immediate effect and this meant the day following its first publication, which in the present case was four days after its enactment by the Common Council.

It will appear from an examination of the unexpired franchises attached as exhibits to plaintiff's bill of complaint and made part thereof, that some of them are for a definite time and have several years yet to run *and some of them are perpetual.* (See Exhibits F, E, and E, R. pp. 118, 119 and 120.) Anyone, even those learned in the law, attempting to apply the provisions of this ordinance to the facts disclosed in this record by the plaintiff's bill of complaint, will encounter grave difficulties—difficulties both in fact and law.

The questions of law that might be claimed to be doubtful and uncertain are many and important. Take the case where the plaintiff has in terms of the ordinance a perpetual grant: Is this grant a *valid contract* within the meaning of the ordinance? This is a question upon which the courts have differed. Yet, at the peril of a $500 fine and ninety days' imprisonment, plaintiff company's

officials and employes must decide it instantly and decide it correctly.

Again, take the case of a passenger boarding plaintiff company's cars in franchise territory—in Fairview, for instance—who wishes to ride by traveling on a Woodward Avenue car, to the northern limits of the city. His journey commences in franchise territory and ends in franchise territory but in making it, he rides over non-franchise territory. Can he make this entire trip under the terms of the ordinance for a single fare of five cents or on a ticket sold at the rate of six for twenty-five cents or eight for twenty-five cents?

No more ingenious or skilful method could be employed in attempting to impair plaintiff's contractual rights under its franchises under the conditions existing in the City of Detroit relating to the plaintiff company's street railway system than to inject such confusing and contradictory provisions in one ordinance.

Whatever may be said of the words of the ordinance, its operation will necessarily result in an impairment of appellant's contractual rights, and this, we submit, entitles it to relief.

*Yick Wo vs. Hopkins*, 118 U. S., p. 373.

This case is cited with approval and other cases of like nature are cited and quoted from in

*Home Telephone and Telegraph Co. vs. Los Angeles*, 227 U. S., pp. 290, 291.

We contend that the pretended exception referred to is void for uncertainty and ambiguity and violates the rule of law applicable in such cases "that the provisions of an ordinance must be definite and certain."

It is stated in Ruling Case law, Vol 19, p. 810, under the topic "Municipal Corporations," as follows:

> "Ordinances must be certain and definite. An ordinance of a regulatory nature must be clear, certain and definite, so that the average man may with due care after reading the same understand whether he will incur a penalty for his actions or not; otherwise, it is void for uncertainty.

We think it can be safely said that this is a statement of law sustained by overwhelming authority and we refer to some of the decisions so holding:

*Kreulhaus vs. City of Birmingham,* Decision of Supreme Court of Alabama, 51 So. 297; 26 L. R. A.—N. S.—492.

*State vs. Clarke,* 69 Conn., 371; 39 L. R. A. 676.

*City of St. Paul vs. Schleh,* 101 Minn., 425; 118 Am. St. Rep. 638.

*Atkinson vs. Goodrich Trans. Co.,* 60 Wis., 141.

*State vs. New Orleans City R. R. Co.,* 49 La. Ann. 1571.

The case of

*Kreulhaus vs. City of Birmingham,* 26 L. R. A.—N. S.—492,

shows that the uncertainty which makes an ordinance void may be one which arises from the legal difficulty of ascertaining its meaning. There, the ordinance which was held to be uncertain reads as follows:

> "All offenses that are misdemeanors under the laws of the State of Alabama, as defined by the statutes or by the common law in force in the State of Alabama, are hereby declared to be offenses and misdemeanors under the laws and ordinances of the Mayor and Aldermen of the City of Birmingham."

In holding the law void for uncertainty, the Court said:

> "True, the ordinance prohibits only those acts now prohibited by statute or common law, but this does not narrow the field of inquiry, because it still remains to be determined whether any particular statute or common law principle has relation to any purpose which may be enforced by a municipal ordinance. The judgment of the legislative branch of the government is not expressed. The citizen must judge for himself, at the peril of becoming a violator of law if he makes a mistake in a matter about which the courts are often not in accord. Such an ordinance is void."

We submit that plaintiff company's officers and employes should not be expected to be able to decide upon the effect of the "exception" provision referred to instantly and correctly at the peril of fine and imprisonment. We can say of this case, as the Supreme Court of Alabama said of the Kreulhaus case:

> "The judgment of the legislative branch of the government is not expressed. The citizen must judge for himself, at the peril of becoming a violator of the law if he makes a mistake in a matter about which the courts are often not in accord. Such an ordinance is void."

It is not necessary in this connection to determine whether, if the other provisions of the ordinance complained of were otherwise valid, the invalidity of the "exception" provision referred to would invalidate the entire ordinance. It is sufficient for the purpose of this case, if it be true, that the so-called "exception" clause referred to was invalid, for this would leave the provisions of Section 4 of the ordinance unquestioned and the provisions of Section 4 were clearly in conflict with the provisions of the plaintiff company's unexpired franchises referred to.

Authority cannot be necessary to support our contention that Section 4 referred to—

> "Section 4. Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for twenty-five cents."

given its effect by its clear and explicit terms, would impair plaintiff company's contractual rights under the unexpired franchises referred to, but if authority be necessary, the decision of this court in

*Detroit United Railway vs. Michigan*, 242 U. S. 252,

where some of the identical franchises involved in this case, notably the so-called Fairview franchise and the franchises in the Township of Greenfield, set out in plaintiff company's bill of complaint, determined that the attempt upon the part of the City to compel carriage of passengers upon tickets sold eight for twenty-five cents because of the extension of the territorial limits of the city to include part of the territory covered by franchises previously granted by adjoining municipalities, where the franchises so previously granted provided for a fare of five cents without transfers, impaired the obligations of the plaintiff company's franchises is authority,—is authority.

The same principle was recognized in

*People vs. Detroit United Railway*, 156 Mich. 662,

where the Supreme Court of Michigan, speaking by Mr. Justice Hooker, said:

> "In my opinion there is little excuse for the prosecutions, of which the two involved in this cause are samples. Under the most elementary principles, and by the express terms of the ordinance, the defendant secured contract rights under the ordinance of 1894 to run two lines of street railway, one a crosstown line, and another running at right angles therewith,

agreeing to give transfers at intersecting points. Now it is proposed (by the provisions of the ordinance referred to) to compel them to do more than this. They are asked to establish an additional route by putting on cars whose route shall be a combination of portions of both of said original routes. The effect would be to compel an unnecessarily frequent schedule on parts of the lines, or an infrequency of cars upon other parts. * * * Furthermore, it would deprive defendant of its right to collect a second fare from passengers who should transfer to other lines intersecting Fourteenth Street. The claim that the ordinance, in Section 17, reserved power to the council to regulate the running of cars, is not overlooked.

* * * * * * * * * * * * *

The ordinance is an infringement of the constitutional provision regarding the impairment of contracts."

The provisions of the Constitution of Michigan relating to the impairment of contract rights and taking property without due process of law are, in substance, the same as the provisions of the Constitution of the United States in that regard.

**Do the provisions of the ordinance complained of take plaintiff company's property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States?**

It appears by the allegations of plaintiff's bill of complaint that the value of plaintiff's property necessarily employed in the operation of its street railway system within the limits of the City of Detroit, was $33,523,423.00.

It appears that upon the basis of the rates of fare in force on plaintiff company's lines of railway within the City of Detroit between January 1st and June 30, 1918, after adding the increase in wages given its employes by the award of the War Labor Board, but $43,572.83 of the gross earnings of the company remained, above operating expenses, to apply toward interest upon the value of plaintiff company's property employed in rendering this service, while interest at the rate of six per cent upon such value for said six months amounted to $994,997.83. (See Exhibit 600, R. 40.)

It also appears by the allegations of such bill that by applying the provisions of the ordinance complained of to the plaintiff company's income and expenditures for the same period, January 1 to July 1, 1918, the gross earnings would be insufficient by the amount of $699,683.51 to meet operating expenses, without making any provision for interest upon the value of the plaintiff company's property employed in rendering such service. (See Exhibit 500, R. 41.)

The learned District Judge recognized the effect of these allegations, but undertook to answer them by asserting that, inasmuch as a considerable part of the lines of railway making up plaintiff company's street railway system were being operated without express franchises it could not complain of the confiscatory rates of fare fixed by the ordinance complained of, because the plaintiff could stop the operation of its cars and cease serving the public needs and thus avoid the loss it was recognized it would sustain in the operation of its system.

The learned District Judge in asserting that plaintiff company could ignore the rights and necessities of the public and could arbitrarily discontinue its service, if not

satisfied with the confiscatory rates fixed by the ordinance complained of, evidently overlooked the necessary implication involved in the language employed in the opinion of the Court in the Denver case hereinafter referred to, where it is stated:

> "We cannot read the enacting provisions (of the ordinance) as leaving the Company actually without the right to maintain its plant, *for necessarily this would leave it at liberty to discontinue the service at will.*"

But we contend that the case referred to—

> *Denver vs. Denver Union Water Co.*, 246 U. S. 178,

is authority sustaining our contention that the ordinance takes property without due process of law. In that case, as in this, a public utility was occupying the streets of a city after the expiration of its franchise. In that case, as in this, the legislative body of the city which had the power to compel the removal from its streets of the property of the utility, enacted an ordinance prescribing the rates at which the public utility should continue to render service. In that case the Court held that the ordinance took property without due process of law because the rates established did not secure a fair return on the reproductive value—less depreciation—of the property of the utility. In this case the rates established by the ordinance do not secure a fair return on the reproductive value—less depreciation—of the property of appellant. There is no essential difference in the language of the two ordinances. In the Denver case the ordinance contained provisions which indicated that it would not be instantly repealed. The ordinance in this case contains such provisions. It states (Sec. 7, p. 111): "Unless amended or repealed it shall remain in force for one year."

The ordinance (see Sec. 1, p. 110) is applicable to "any line which is now operated *or shall hereafter be operated* without a franchise fixing the rate of fare."

By Sec. 3 (Record, pp. 110 and 111) appellant is required to sell tickets at the rate of eight for twenty-five cents, and in Section 1 tickets at the rate of six for twenty-five cents, which are good for transportation at any time they are presented by the holder. (Of course, the eight for twenty-five cents tickets are only good during certain hours of the day.) The ordinance in the Denver case imposes a fine upon the company and its agents for any violation of its provisions. The ordinance in this case imposes both a fine and imprisonment for a violation of its provisions. (See Sec. 6, Record p. 111.)

In deciding the Denver case this Court pronounced the provisions above referred to "inexplicit." (P. 190.) It did this, as we understand the opinion, because there was inserted in that ordinance:

> "a declaration that the enactment is made without recognizing the Company's right to occupy the streets or to continue its services."

Nothing of that character is in the Detroit ordinance. So that in deciding this case the Court will not be called upon—as it was in the Denver case—to show that no weight should be given to such declaration. And this was perhaps the most difficult question presented in the Denver case. The decision in the Denver case was not based upon the "inexplicit" provisions above referred to, but it was based upon the enacting language of the ordinance (which was not materially different from the enacting language of the Detroit ordinance) and its application to the sub-

ject-matter thereof. The Court's reasoning is as follows (p. 190):

> "The subject-matter was a prime necessity of life for which there was no substitute available. The very act of regulating the Company's rates was a recognition that its plant must continue, as before, to serve the public needs. The fact that no term was specified is, under the existing circumstances, as significant of an intent that the service should continue while the need existed as of an intent that it should not be perpetual. Without attributing to the initiators and to the City Council a purpose to subject the inhabitants to grave danger of disease, or worse, we cannot read the enacting provisions as leaving the Company actually without the right to maintain its plant in the city thereafter, for, necessarily, this would leave it at liberty to discontinue the service at will. The alternative which we adopt is to construe the ordinance as the grant of a new franchise of indefinite duration, terminable either by the City or by the Company at such time and under such circumstances as may be consistent with the duty that both owe to the inhabitants of Denver. It recognizes the dependence of the City upon this plant, by necessary implication confers upon the Company whatever privileges may be necessary to enable it to continue serving the public, in effect requires it to furnish water and in terms prohibits it from exceeding the specified rates."

Is that reasoning applicable to this case? We insist that it is. The record in this case shows that appellant owns and operates all the street railways in the City of Detroit, consisting of over 270 miles of track (p. 2); that the City of Detroit has a population of over 750,000; that it

> "is an essentially industrial city—very much the largest part of its male population being employed and engaged in great industrial plants and factories being operated within the city limits and adjacent thereto and largely located at the outskirts of the City and for the most part are remote from the resi-

dences of the persons employed in such plants and factories, thus necessitating the transportation of employees of such plants and factories to and from their homes to their places of employment. The street railway system of the plaintiff company is substantially the only means of transportation for such employees to and from their homes to the places of their employment and the interruption of the operation of plaintiff company's entire street railway system as a single unit for such transportation or the separation of the so-called franchise lines from the so-called non-franchise lines, would paralyze the industrial and business life of the City of Detroit and throw thousands of its residents out of employment and shut down its industrial plants and factories."

(Record, p. 18, paragraphs 25, 26 and 27 of the Bill.)

The only difference between the Denver case and this case is that in the Denver case the public utility was engaged in furnishing water and in this case it is engaged in furnishing transportation. But this difference is not a difference of kind, but of degree only. Under the averments of the bill above quoted, the transportation furnished by the appellant's street railway lines is absolutely essential to the inhabitants of the city, and if it is not furnished the industrial plants and factories of a large city, whose principal business is manufacturing, must be shut down. To paralyze the industries of a great industrial city and throw its workmen out of employment is an evil of scarcely less magnitude than that of depriving its inhabitants of water.

We respectfully submit that the reasoning of this Court in the Denver case above quoted is applicable to this case.

## Judge Tuttle's Attempt to Distinguish This Case From The Denver Case.

The learned District Judge in an attempt to distinguish this case from the Denver case evinces a misunderstanding both of the Denver case and of this case. (See Record, pp. 198, 199.) He apparently thought that the decision in the Denver case turned upon certain provisions of the ordinance which this Court declared to be "inexplicit." He also said that in the Denver case

> "Both parties to the suit and the Court proceeded upon the assumption that the only question involved was the reasonableness of the rates complained of."

This was clearly erroneous, for in the opinion of the Court, after pointing out that the parties had proceeded upon that assumption and therefore could not ask a reversal on other grounds, it is said (see p. 186):

> "But supposing the question were properly raised, we are convinced that by the true intent and meaning of the ordinance of 1914 new rights were conferred upon the Company of such a nature that in considering the effect of the provisions limiting rates the plant must be valued, not as 'junk' but as property useful and in use in the public service."

In attempting to distinguish this case from the Denver case, the learned District Judge said:

> "Here the plaintiff makes no claim that it is under the duty or that it possesses the right to continue to operate its street cars upon what it refers to throughout its bill as the 'non-franchise lines in the city.'"

This statement clearly evinces a misunderstanding of this case as well as of the Denver case. The Denver case decides that the enactment of the ordinance makes it the

right and duty of the owner of the utility to continue to serve the public. Surely it will not be contended that appellant does not claim to possess that right and to be under that duty. Indeed, as shown in other parts of this brief, it claims, for other reasons than those herein specified, to possess the right and to be charged with that duty.

## As to the Situation If No Ordinance Had Been Enacted.

Even if an ordinance had not been enacted that in effect not only authorized but required the plaintiff company to continue its service, we submit that under the conditions existing as set forth in the plaintiff's bill of complaint, the plaintiff not only had a right to but was under a duty to serve the public needs in continuing the operation of its street railway system and that so long as its system was actually in use in serving the needs of the public, it must be treated as a going concern and its value fixed on the basis of its worth for use and in use.

While the learned District Judge did not dwell upon the basis upon which the plaintiff's property should be valued for the purpose of determining whether the rate fixed by the ordinance complained of was confiscatory or not, that question is so nearly related to the questions considered, that we deem it proper to express our views relating to that subject.

The physical character of a public utility property and its capacity to render service are not affected by the absence of a franchise. The rates of fare which a municipal corporation endowed with the legislative power to fix rates, may fix must be compensatory, that is, provide rea-

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sonable compensation for the service rendered—for the use of the property necessarily employed in rendering the service. The use is the same and the service is the same and the value of the service the same whether the company's right to serve is perpetual or is immediately terminable. The rate of compensation, therefore, should be the same in either case.

Any argument, that because the city may order an immediate removal of the property and thereby make it junk, and therefore to be valued as junk in determining the reasonable rate for its use and that any rate fixed may not be said to be unjust or unreasonable because the company, if not satisfied with it, may discontinue service and remove its property, involves a confusion of ideas.

If the city does not desire the service of the public utility property, the most it could do under any circumstances is to compel its removal. If it does desire the service and is lawfully clothed with power to fix the rates of fare, it may do so. Its action in the one case (ordering its removal) is based on the assumption that the property is not useful. Its action in the other case (fixing rates of fare to compensate for use of the property) assumes and declares that it is useful. Even though the city be entitled to reduce the property to junk, it is not junk until the city takes that action and its value in use is not a junk value but a value in use. Until the condition arises which makes the property junk, it cannot be valued as if it were junk. Nor does the claim that the city may make the acceptance of any rate it pleases a condition to its consent to the company's continuance even if the company, if not satisfied with the rate, might discontinue its business and remove its property, have any bearing on the reasonableness of the rate. Parties negotiating a contract may make any

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proposals they please. If assented to, they are binding and the question of just compensation does not arise. If not accepted, they are nugatory and cannot be the basis of any legal demand by either party.

A confiscatory rate takes property without due process of law and the city may not fix such a rate. It may compel the removal of the property under proper conditions and thereby destroy its value, but it cannot expel the company and retain its property. To fix a rate on a junk basis, depriving the company of a fair return on its investment, is a substantial appropriation of property. It virtually ousts the company from its ownership and appropriates the value of that ownership to the city.

A situation analogous to the situation of the plaintiff was considered by the Honorable John M. Killits, District Judge for the Northern District of Ohio, Western Division, in the case of *Doherty & Company vs. The Toledo Railways & Light Company*, not yet reported. In his opinion filed in that case, the learned Judge said:

> "Although the Toledo Railways & Light Company has been operating in Toledo for more than four years without a franchise, it, nevertheless, has the right to make reasonable use of the streets in the proper conduct of its business until it is forbidden to continue by positive action of the city authorities, who may impose, as an alternative to ejection, reasonable conditions of use (*City of Detroit vs. Detroit United Railway*, 172 Mich., 136, 137 N. W., 645). It is therefore no trespasser, for the city authorities have not hitherto acted either to eject it or to impose reasonable conditions of use.
>
> Because there is no contractual relations between it and the City of Toledo (that is, it has no franchise), the power of the city over it is limited to the pursuit of one of the two alternatives above suggested, namely, to order the company off the streets, or to prescribe terms of use which meet the

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law. The right of the city to eject the company from the streets cannot be questioned in any court. That would be the exercise of a public policy, the decision of which is delegated exclusively to the Council.

Whether or not conditions of use imposed by the city authorities upon this franchiseless and privately operated public utility are fair and reasonable, provided they are not accepted by the company, is a subject of judicial inquiry (*Reagan vs. Farmers' Loan & Trust Company,* 154 U. S., 362, 397) and within the jurisdiction of this court because of the provisions of the 14th Amendment of the Constitution of the United States; *The City of Cincinnati vs. Cincinnati & Hamilton Traction Company,* decided January 7, 1918; *City and County of Denver vs. Denver Union Water Company,* decided March 4, 1918, both by the Supreme Court of the United States.

When a public utility corporation is operating without a franchise and, consequently, is not bound by any contract stipulation therefor, which is the case here, it has the right to demand for its service from time to time a rate of fare which will secure to it reimbursement for its expenditures properly incurred in rendering the service, plus a fair return upon the valuation of the plant actually employed in performing the service; Minnesota rate cases, 230 U. S. 352, 433-4, and cases therein cited, and the recent decisions of the Supreme Court of the United States above referred to.

It is for the public authorities in the first instance to regulate the rates to be charged for the service of such a corporation; 94 U. S. 113; 110 U. S. 347; 154 U. S. 362, 397; but if such rates do not secure, in addition to a reimbursement of operating expenses, a reasonable or fair return on the actual value of the plant, to enforce them by the public authorities would be to violate the constitutional prohibition against taking property without due process of law; *Brymer vs. Butler Water Company,* 179 Penn. State, 231. To the same effect are the decisions of the Supreme Court just referred to and

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many earlier decisions. The 'fair return' to which the company is entitled upon the value of its plant is that rate per cent actually received in the absence of special contract in the community where the service is rendered (the Denver case, above) and where the corporation performs a service *obviously necessary and indispensable to the well-being of the community,* the capital of the company upon which the 'fair return' is to be computed should be the fair and reasonable value of the plant of the corporation engaged in such service valued as the equipment of a going concern (the Denver case). In the Denver case the Supreme Court found that six per cent. was the proper percentage because of the same conditions respecting use of money prevailing in Denver which exist also in Toledo, wherefore we should take that rate per cent as equally the one appropriate here.

It follows from the foregoing that there is no obscurity as to the rights of the company or as to the limitations of the city's power of action or as to the duty of the court when its authority is invoked by either party. The law is definitely and finally settled. The court can do nothing more than to refuse any relief to the street railroad company if the council tells it to get off the streets. It can no nothing less than to tell the city that it must allow to be collected a compensation for service which meets the conditions above established so long as it permits the railroad to operate at all. There is no third course which the court can take unless the parties agree.

Primarily the duty of fixing regulations (including rates of fare) for street occupancy is upon the city authorities; it is only when the city in that belief acts unreasonably or fails to act at all that the court has any function. The court cannot fix rates of fare to which the city is bound against its consent. Its power is nothing more than to say whether or not a particular condition of street occupancy, such as the fare to be charged, is reasonable, and if it finds such conditions to be unreasonable and a substantial interference with the constitutional

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rights of the company, the court may set such condition aside.

If the city does not act, or until the city acts, the company of its own motion and without the city's approval, may establish rates to which the public must conform, *and to protect which it may appeal to a court.* It has the same right to fix the price at which it will sell its service as the merchant has to put a price on his goods, and until the company's price is revised legally by the city or in judicial proceedings, it must be met by the car rider if he would ride at all."

## In the Absence of Legislative or Contractual Restriction, A Common Carrier Has the Power to Fix Its Own Rates Subject to Review by the Courts As to Reasonableness.

That, in the absence of legislative or contractual restriction, a common carrier has the power to fix its own rates—subject to review by the courts as to the reasonableness—was recognized by this Court in several cases—among others,

*Interstate Commerce Commission vs. Chicago Great Western Railway Company,* 209 U. S. 108,

where the Court say:

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own

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situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits."

And say further:

"It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly when rates are changed the carrier making the change must, when properly called upon, be able to give a good reason therefor, but the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done. Those presumptions of good faith and integrity which have been recognized for ages as attending human action have not been overthrown by any legislation in respect to common carriers."

See also

*Munn vs. Illinois*, 94 U. S. 113, 134.

*Re Arkansas Railroad Rates*, 168 Fed. Rep. 720.

*Madison vs. Madison Gas Company*, 139 Wis. 249.

## Any Condition Imposed by the City as to the Use of the Street Could Be Binding Only After Acceptance by the Company.

In connection with the portion of the learned Judge's opinion, in which he concluded that under certain conditions the plaintiff company would be required to carry passengers entering upon franchise lines over its non-franchise lines, or vice versa, without any compensation, he added: "It is, of course, entirely within the power of the city to prescribe such condition for the privilege of using

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the non-franchise territory to carry passengers on such a trip." We challenge the correctness of this statement in the absence of acceptance, express or implied, by the company, for this would be equivalent to compelling the company to accept against its protest confiscatory rates for transportation of passengers for the privilege of using the streets. This would be in conflict with the decision of the Supreme Court of Michigan in

*City of Detroit vs. Detroit United Railway,* 172 Mich. 155,

where Mr. Justice McAlvay, speaking for the Court, said:

> "The defendant company never acquiesced in or accepted the terms (of rental) imposed in case of the use of these streets by defendant after the expiration of the franchises. On the contrary, by written notice, the complainant was notified of its claim . . . that the charges fixed for a further use of the streets were excessive and confiscatory, and that it would not accept the same. This position thus taken by defendant has been the subject of determination in this litigation. The cases cited by complainant in support of its contention are not in point, because the relations of the parties in those cases in no instance are similar to these in the instant case, and the subsequent user by defendant, having been in defiance of complainant's claim, did not establish an acceptance. While the cases cited to the effect that a municipality, on the expiration of the franchise of a street railway, may impose such terms as it sees fit for the further use, are accepted authority, none of them determine that they become operative without acceptance by the railway. No authority has been cited to the effect that a municipality may arbitrarily, without the consent of the grantee, impose terms upon a street railway in granting franchises.
>
> * * * * * *
>
> The conclusion to be drawn from our determination of the different propositions discussed is that the contractual relations between these parties

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> ended upon the expiration of the franchises, and all rights in the defendant company to occupy the city streets, and maintain and operate a street railway thereon, then terminated and defendant thereafter became a trespasser.; that complainant has the absolute and unquestioned right at any time to compel the defendant company to vacate the streets upon which these franchises have expired. . . . *We have determined that complainant could not arbitrarily fix a fee for the use of these streets by defendant,* from which conclusion it follows that this Court cannot assume such power."

If the City could not arbitrarily fix a fee or rental for the use of the streets by the plaintiff company, can it accomplish the same result by requiring it to carry passengers at a rate of fare that amounts not only to paying for such use but, in practical effect, would result in the confiscation of its property?

While the court in the case last quoted states in general terms that after the termination of the franchise of the plaintiff, in continuing the operation of its cars upon the streets of the city, it became a trespasser, this was only intended to apply to a case where, in addition to the expiration of the franchises, it continued such operation after notice had been given by the city not only to cease operating its cars but to remove its property from the streets and this is clearly shown by the decree entered in that case, a copy of which will be found in the records of that case reported in 229 U. S. 39. Section 5 of that decree reads:

> "That by reason of said defendant's refusal to comply with the terms of the resolutions of the Common Council of the City of Detroit (of which T, S and Q set forth in the bill of complaint are copies), the defendant is without any rights in or to said streets and it has been and is a trespasser in continuing to occupy them and operate cars thereon."

We submit that it is not true as stated by the learned District Judge that because the plaintiff company was

operating cars upon streets that had no franchise rights but with consent of the city, the city could impose any conditions upon such use that it might deem expedient.

This question was also considered by this Court in *Cincinnati vs. Cincinnati & H. Traction Co.*, 245 U. S. 448.

The rule was negatived by the prevailing opinion of the court filed in that case written by Mr. Justice McReynolds and was also referred to and specifically recognized in the dissenting opinion of Mr. Justice Clark, wherein he states:

> "It is impossible for me, also, to share in the interpretation given to §4 of the ordinance which makes it the subject of special injunctive relief. The section provides that the continuing to operate cars on the streets in controversy 'shall be deemed an acceptance of this ordinance and of all of the terms hereof.' Considering the ordinance as a whole, and not as if it were a group of independent provisions, if this section has any meaning at all, it cannot be more than an assertion on the part of the City, that if the companies, without formal acceptance, *but without protest,* should continue to operate the lines of railway, such action would be taken as implying an acceptance of the burdens as well as of the benefits of the ordinance. *But such an implication of acceptance certainly could not prevail in any court against an assertion to the contrary by the companies.*"

This we understand to be in substance a declaration of the same rule laid down by the Supreme Court of the State of Michigan in *Detroit vs. Detroit United Railway,* 172 Mich., above herein quoted.

We therefore submit that the allegations contained in plaintiff's bill of complaint, under the rules of law applicable to the facts alleged, established not only the juris-

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diction of the court below, but as well that plaintiff was entitled to the relief prayed for, in that they show:

(a) That the provisions of the ordinance complained of impair the obligation of plaintiff's contract (existing franchises), in violation of the provisions of Section 10 of Article 1 of the Constituiton of the United States; and

(b) that the enforcement of the provisions of such ordinance would take plaintiff's property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

It follows that the learned Judge erred in dismissing such bill of complaint and that such decree entered should be reversed with directions to grant a temporary injunction as prayed for—as plaintiff was clearly entitled to such relief on the hearing in the court below.

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# SUPREME COURT OF THE UNITED STATES.

October Term, 1918.

No. 666.

| | |
|---|---|
| DETROIT UNITED RAILWAY, *Appellant,* *vs.* CITY OF DETROIT, *Appellee.* | (File No. 26,752) |

## BRIEF ON BEHALF OF APPELLEE.

### ARGUMENT.

Counsel for appellant assert and contend in their last brief filed in this cause, that the ordinance adopted by the Common Council of the City of Detroit on August 9, 1918, fixing the rates of fare to be charged on appellant's non-franchised lines of railway, impairs the obligations of its contracts and takes appellant's property without due process of law in violation of the federal constitution;

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while, upon the part of the appellee, it is here asserted and contended that said ordinance does not impair the obligations of appellant's contracts, nor does it take appellant's property without due process of law.

The ordinance is set forth in full on pages 110, 111 of the Transcript of Record in this case and is identified as Exhibit "X" among other exhibits attached to the bill of complaint, and as the ordinance is very short we will quote some of its sections at length.

Section 1 of the ordinance provides:

> "No person, partnership or corporation operating a street railway on the streets of the City of Detroit, for the carriage of passengers for hire, shall charge more than five cents for a single ride, or six tickets for 25 cents, per person for one continuous trip within the city over any line which is now operated or shall hereafter be operated *without a franchise fixing the rate of fare.*"

Section 2 provides:

> "No such person, partnership or corporation shall charge a higher rate of fare upon any line now or hereafter operated *under a franchise contract than is fixed by such franchise.*"

Section 3 provides:

> "Between the hours of five and six-thirty a. m. and four forty-five and five forty-five p. m. tickets in strips of eight for twenty-five cents shall be sold on all cars on all lines *except where such sale would be contrary to the terms of a franchise contract,* which tickets shall entitle the holder to the same rights between said hours as the payment of a five cent fare would."

Section 4 provides:

> "Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be

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five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for 25 cents."

Section 5 provides:

"A continuous trip means one journey from point to point within the city, whether the same is made upon one car or one line or by means of transferring from car to car or from line to line. Each such person, partnership or corporation, and the officers, agents, servants and employes thereof, shall, upon demand, furnish proper transfers to carry into effect the provisions of this section. *The provisions of this Ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract.*"

It must be remembered that on August 7, 1918, appellant arbitrarily established a schedule of fares for its lines of railway within the city, to become effective on August 8, 1918, and attempted to enforce this schedule, which is as follows:

"A single cash fare 6 cents or 10 tickets for 55 cents, either the cash fare or ticket being good on any connecting or intersecting line within the limits of the City of Detroit."

Appellant's last Brief, bottom p. 7, top p. 8.

The highest rate of fare ever charged theretofore by appellant upon any of its lines or upon any of the lines of its predecessors in title was 5 cents for a single passenger, or 8 tickets for a quarter, or 7 tickets for a quarter, or 6 tickets for a quarter, each of which was good for a single fare on some portion or all portions of the railway lines, as the case may have been.

The provisions of the ordinance complained of could not be other than they are and meet the situation that pre-

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sented itself in Detroit with reference to street car traffic when it was adopted. We say this because of the many different contracts, which the Company has which have not yet expired but which have conflicting provisions with reference to the rates of fare and because of the arbitrary action of appellant in fixing a rate of fare far above that in any contract which it ever had, and also because appellant company had attempted to arbitrarily and without the consent of the city, fix a rate of fare according to its schedule above referred to.

Counsel call attention in their brief to but two of their contracts, those in old Fairview and in Highland Park, the terms of which they say this ordinance offends against. These contracts are not affected by the ordinance. Its terms do not apply to them except to prevent appellant from collecting higher fares than those stipulated in the grants.

But there are other contracts equally as important to which we desire to call attention and to which the ordinance perhaps more particularly applies. We quote parts of these contracts at some length so that the Court may understand readily their terms with reference to rates of fare. They follow:

Section 6 of Exhibit "J" R. pp. 130-131 provides:

> "The said Detroit, Ypsilanti & Ann Arbor Railway, grantee herein, its successors and assigns, shall be entitled to charge not more than five cents for the carriage of any single passenger for one continuous trip, over said railway on said Chicago road (Michigan avenue), within the limits of the Township of Springwells. Said grantee, its successors and assigns, shall carry passengers from the Flint & Pere Marquette Railroad crossing to any point on the line of the Michigan avenue street railway

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in the City of Detroit, west of Woodward avenue, for a single fare of five cents for a continuous trip. Said grantee, its successors and assigns, shall have the right to collect a fare of ten cents from any point in Springwells Township west of the Flint & Pere Marquette Railroad to any point on the line of the Michigan avenue railway in the City of Detroit. Said grantee, its successors and assigns, shall have the right to charge fares at the rate of one and one-half (1½) cents per mile between any point on its line in Springwells Township and any other point on the line of its road, as the same may be extended as far west as the City of Ann Arbor; but no single fare under this provision shall be less than five cents. Nothing herein contained shall be construed to prevent the charging of a less rate of fare for the carriage of any passenger, at the option of the grantee corporation, its successors and assigns."

The appellant had attempted to set this contract aside and to charge a straight six cent fare, or ten tickets for fifty-five cents, before the ordinance here attacked was adopted.

Exhibit "K" is another franchise or contract still in force, which the appellant attempted to set aside before the ordinance here attacked was adopted. The rates of fare therein provided are:

"The rates of fare for any distance within said Township shall not exceed five cents for the carriage of any single passenger and ordinary hand baggage, for one continuous trip over said railway within said Township; Provided, that the grantees herein may charge one and one-half cents per mile to passengers on cars which may hereafter run through said Township from outside villages or towns; Provided, further, that one child under seven years of age accompained by parent or guardian shall ride free, and two children under seven years of age shall pay one fare; Provided, further,

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that workingmen's tickets shall be kept for sale on the cars of said railway at 8 for 25 cents, good for one hour morning and evening at such time as may hereafter be designated by ordinance of the Township Board."

Record, p. 135.

Exhibit "L" is another franchise or contract still in force which the appellant attempted to set aside before the ordinance here attacked was adopted, the rates of fare in which are:

"The fare for each person over such portion of the line as lies within the limits of said Township, or any part thereof, shall not exceed five cents, provided that said Railway, its successors and assigns, shall keep on sale on all its cars, tickets which shall be sold at the rate of eight for twenty-five cents, which shall be accepted as fare from any point in said Township to any other point therein, between the hours of 5:30 P. M. and 6:30 P. M. and between the hours of 6 and 7 A. M. One child under six years of age, when accompained by an adult, shall be carried free, and one fare shall be charged for two of such children; provided, however, that when cars are hired for special specific purposes or time the rate herein fixed shall not apply."

Record, p. 138.

Exhibit "M-1" is another franchise or contract still in force, which the appellant attempted to set aside before the ordinance here attacked was adopted. The rates of fare therein fixed are:

"The rate of fare for a single ride, for a continuous trip for any distance in one direction on said route within the Township of Springwells shall not exceed five cents; provided, that said rate of five (5) cents shall entitle the passenger to ride over the route herein granted from the junction of Fort street and Woodmere avenue in said Township of Springwells, either direct or by transfer, to the City Hall in the City of Detroit; and said rate of five (5) cents shall entitle the passenger to ride from

the City Hall in the City of Detroit over the route herein granted in the Township of Springwells direct or by transfer to the junction of Fort street and Woodmere avenue in said Township of Springwells; said passengers either coming from or going to said City Hall to be routed over such route within the present city limits of the City of Detroit, as may be most convenient to said Company."

Record, p. 141.

Exhibit "M" is another franchise or contract still in force, the terms of which appellant attempted to set aside before the ordinance here attacked was adopted. The fares therein provided are:

"In collecting fare, the street railway commencing at the intersection of the Dearborn and River Roads, so-called; thence by the Dearborn Road and Fort Street to the eastern end of the company's tracks at the eastern limits of the City of Detroit shall be deemed one route, and from the eastern end of the company's track at the eastern limits of the City of Detroit to the intersection of the Dearborn Road and Fort Street via Clark Avenue and the River and Dearborn Roads shall be deemed another route, and each passenger traveling over either route continuously either way, over the whole or any portion thereof, shall pay one fare, the amount of which shall not exceed five cents. Provided, that the fare of each passenger making a continuous trip on either or both routes within the Township of Springwells shall not exceed five cents.

"Provided, however, that the company shall have the right, if its officers shall in their judgment deem it necessary, to require all passengers who are required to change cars on either route to procure a transfer ticket from the conductor or driver of the car on which they commence their trip, said transfer ticket to be good for a fare on the next connecting car only, and no passenger to be entitled to free transportation on any connecting car except upon the surrender of said transfer ticket."

Record, p. 146.

Exhibit "P" is another franchise still in force, the terms of which appellant attempted to set aside before the ordinance here attacked was adopted. The rates of fare are:

> "The rate of fare to be charged by said Railway Company for the carriage of passengers shall be regulated by the Township, except that such fare shall not be reduced without the consent of said Company below five cents for the carriage of one passenger a single trip within said Township to the City Hall in the City of Detroit."
>
> Record, p. 151.

Exhibit "Q and R" is another franchise still in force, the terms of which appellant attempted to set aside before the ordinance here attacked was adopted. The rates of fare therein provided are:

> "The rate of fare to be charged by said Railway Company for the carriage of passengers shall be regulated by the Township, except that such fare shall not be reduced without the consent of said Company, below five cents for the carriage of one passenger a single trip within the limits of this Township, nor below five cents for a single fare from the French Lane to the Detroit City Hall."
>
> Record, bottom p. 153, top p. 154.

Exhibit "I" is another contract still in force, the terms of which appellant attempted to set aside before the ordinance here attacked was adopted. The fares are:

> "The rates of fare for a single ride for a continuous trip for any distance in one direction on said Michigan avenue within the Township of Springwells, shall be five (5) cents; and said grantee shall keep on sale at all times on its cars in service in said Township, tickets to be sold in strips of eight tickets for twenty-five cents; each of which tickets or five-cent fares, shall be accepted by said grantee for a single ride in one direction, from any point in said Township on said avenue, to any other

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point in said Township on said avenue, over the tracks herein authorized."

Record, bottom p. 127, top p. 128.

Exhibit "H" is another contract or franchise still in force, the terms of which appellant attempted to set aside before the ordinance here attacked was adopted. The rates of fare are:

> "The rate of fare on the line of said railway shall be five cents (5c) for each passenger, for any distance in said township, and six (6) tickets shall be sold for twenty-five cents (25c) and each ticket shall entitle the holder to the same privileges as a cash fare, and shall be kept for sale on all passenger cars. There shall also be a special ticket good only for children going to or from school, that entitles the holder to ten (10) rides within said Township of Greenfield. Such special tickets shall be kept for sale on all passenger cars for thirty cents (30c) each. Children under six years of age when accompanied by their parents or guardians, shall ride free."
>
> Record, p. 125.

Exhibit "B-2" is another contract still in force, the terms of which appellant attempted to set aside before the ordinance here attacked was adopted. The rates of fare are:

> "For the purpose of collecting fares, the above-described line of track shall be deemed a continuation of the track heretofore laid and now in operation in said Township and the City of Detroit, and each passenger traveling over said entire route, continuously, either way, or any part thereof, shall pay one fare, the amount of which shall not exceed five (5) cents."
>
> Record, p. 109.

The law of Michigan under which the appellant company is organized, provides that the rates of fare shall not be increased on street railways without the consent of the local authorities.

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Section 8551 Compiled Laws of Michigan, 1915, reads:

> "The rates of toll or fare which any Street Railway Company may charge for the transportation of persons or passengers over their road, shall be established by agreement between such company, and the corporate authorities of the city or village where the road is located, and shall not be increased without the consent of such authorities."

There can be no doubt that these grants engender contracts, from the provisions of which there is no escape unless by consent of both parties, the City and the Company. The ordinance here attacked clearly recognizes this and, in explicit terms, provides it shall not be effective against these several contract or franchise provisions. [Sec. 5 of ordinance, Exhibit X, Record p. 110.]

Appellant may collect the fares upon its lines of railway under these contracts. It has the unchallenged right so to do, and there can be no objection to its standing upon these contracts and demanding full compliance with their terms by the public.

The Company should know where its rights begin and where they end, under these contracts. The ordinance attacked, in positive terms provides that these contracts shall not be impaired. Nothing can be plainer than that, where the English language is understood.

In the case of *Cleveland vs. Cleveland City Railway Company*, 194 U. S. 517, Mr. Justice White in delivering the opinion of the Court says, at page 536:

> "The reason, the conclusion that contracts were engendered would seem to result from the fact that the provisions as to rates of fare were fixed in ordinances for a stated time and no reservation was made of a right to alter; that by those ordinances existing rights of the corporations were surrendered, benefits were conferred upon the public, and obligations were imposed upon the corporations to

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> continue those benefits during the stipulated time. When, in addition, we consider the specific reference to limitations of time which the ordinances contained, and the fact that a written acceptance by the corporations of the ordinances was required, we can see no escape from the conclusion that the ordinances were intended to be agreements binding upon both parties, definitely fixing the rates of fare which might be thereafter charged. Taking all the circumstances above referred to into account, the case before us clearly falls within the rule as to the binding character of agreements respecting rates applied in *Detroit vs. Detroit Citizens' Street R. Co.* 184 U. S. 368, 46 L. ed. 592, 22 Sup. Ct. Rep. 410, and approvingly referred to in *Knoxville Water Co. vs. Knoxville*, 189 U. S. 437, 47 L. ed. 891, 23 Sup. Ct. Rep. 531."
>
> See, also, *Detroit United Ry. vs. Michigan*, 242 U. S. 238.

If the Company can practically enforce these contracts, then it has the unquestioned power so to do, but the difficulty which presents itself is, that the appellant cannot practically enforce the provisions of all its contracts with reference to the collection of fares because of the different rates of fare provided in the different contracts, as well as because the appellant has not track facilities or other equipment or privileges whereby to distinguish practically where one contract begins and another terminates.

Take for instance the situation on Michigan avenue. Two contracts or franchises were granted to predecessors in title of the appellant for the occupation of this avenue with street car lines in the old Township of Springwells, which is now part of the City of Detroit. The grant to the Detroit Electric Railway, made July 1, 1897 (being Exhibit "I", Record, p. 127) for a period of 30 years provides that the rate of fare shall be 5 cents for a single passenger and tickets shall be sold on the cars at all times in strips of 8 for 25 cents, each of which is good for a single ride within the Township of Springwells.

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There was also granted on November 9, 1897, for a period of 30 years, a franchise (being Exhibit "J", Record, p. 131) to the Detroit, Ypsilanti & Ann Arbor Railway which provides that the railway company shall carry a single passenger within the township for 5 cents, and it also provides that a single passenger shall be carried upon the payment of 5 cents from the Flint & Pere Marquette Railroad crossing to any point on the line of Michigan Avenue Street Railway in the City of Detroit west of Woodward avenue.

Two passengers boarding cars in the old township of Springwells, one tendering a ticket and the other a straight 5 cent fare, one would be entitled to ride to the City Hall in the City of Detroit, while the other would be entitled to ride only to Livernois avenue. When the car arrived at Livernois avenue, it would be impracticable to separate these two passengers and require the one that tendered the ticket to leave the car and permit the other who tendered a straight 5 cent fare to remain on the car until it reached any point west of Woodward avenue, which might be to the City Hall.

All of which demonstrates that the situation as to street car traffic in Detroit may be confused and uncertain, because of the said several different contracts the appellant has obtained from different municipalities. This is the principal reason why the appellant operates its railway lines in the city as one single system.

The situation as pointed out on Michigan avenue is not dissimilar to the situation, which obtains on other streets or stub ends of streets, within the one-fare zone, where the appellant has contracts granted to it and its predecessors in title by other municipalities than the City of Detroit.

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For instance, the Rapid Railway Company, predecessor in title to appellant, is obligated to carry passengers from part of the old township of Hamtrack, now within the city, on Gratiot avenue to the City Hall in Detroit for a cash fare of 5 cents. Appellant is also obligated by this contract to carry passengers upon the greater portion of Gratiot avenue in the city for a fare of 5 cents where it has no franchise rights.

Exhibit "P", Record p. 151.

The same condition is true on Michigan avenue. Appellant is bound under contract to carry passengers for a five cent fare upon a large portion of Michigan avenue where it has no franchise rights, or from Livernois avenue to the City Hall.

Exhibit "J" Record, pp. 130, 131.

Now then, because of this possible confusion and uncertainty which might arise by reason of said several contracts, furnishes no ground to say that the ordinance here complained of impairs the obligations of the contracts of appellant. Neither does it furnish a reason for saying that the ordinance takes the property of the appellant without due process of law. The ordinance applies only to the non-franchised lines of the appellant company, and to the franchise lines where its provisions do not conflict with conditions and rates of fare fixed in those several contracts or franchises.

It must be borne in mind that when the ordinance here complained of was adopted, the appellant company was attempting to set aside the rates of fare provided in some of these several grants to which we have called attention, and which are still in force.

At the risk of repetition and for example, appellant was attempting to charge and collect from passengers 6 cents

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for a ride from old Springwells to the City Hall, whereas its contract provided that the passenger should not be required to pay more than 5 cents for such transportation, part of the trip being over franchise line and part over non-franchise line.

Exhibit "J," Record, pp. 130, 131.

Appellant company was also required by the terms of its grant, Exhibit "K," Record, p. 135, above referred to, to provide workingmen's tickets and keep them on sale on its cars 8 for 25 cents, yet it attempted to abrogate this feature of that contract when it undertook by its schedule to increase the rates of fare beyond what they had ever been before. This rate of fare only obtained of course, in the old Township of Hamtramck, but as part of that township is now within Detroit car riders were entitled to the benefit of those provisions of the contract now in existence.

By the terms of Exhibit "H", Record, p. 125, appellant company was also required to carry passengers in the old Township of Greenfield at a single fare of 5 cents for each passenger, or 6 tickets for 25 cents; also sell special tickets to children going to school at a the rate of 10 tickets for 30 cents; yet appellant attempted to abrogate the terms of this contract when it inaugurated its increased rates of fare according to its schedule. These rates of fare applied only, however, to that part of Greenfield which is now in the city. Nevertheless, passengers in that locality were entitled to the benefit of these rates, and the company had no authority, we contend, to increase the rates above those fixed in these contracts.

Other similar cases might be specifically pointed out, but we believe these sufficient to show that the ordinance

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here complained of could not contain other provisions than it does and meet the various rates of fare provided in these several contracts or franchises.

In view of all of which we urge that the ordinance does not impair the obligations of appellant's contracts, nor does it take the property of appellant without due process of law.

Furthermore, when appellant company attempted to enforce the unlawful rates of fare fixed in its schedule, riots and disorders and breaches of the peace followed upon the car lines of appellant where passengers in numerous instances refused to pay the increased rate. To overcome, if possible, all these difficulties, the Common Council of the city was moved to adopt the ordinance complained of. There was no intention nor disposition upon the part of the city authorities to impair the obligations of appellant's contracts nor to take its property without due process of law, the argument of counsel for the appellant to the contrary notwithstanding.

Counsel asks the question on page 19 of their last brief filed herein, to-wit:

> "Again, take the case of a passenger boarding plaintiff company's cars in franchise territory—in Fairview, for instance—who wishes to ride by traveling on a Woodward avenue car, to the northern limits of the city. His journey commences in franchise territory and ends in franchise territory but in making it, he rides over non-franchise territory. Can he make this entire trip under the terms of the ordinance for a single fare of five cents or on a ticket sold at the rate of six for twenty-five cents or eight for twenty-five cents."

We answer this question by saying that such a passenger could not be carried upon that route for a single fare of

either cash or ticket unless appellant company permitted the passenger to do so. The ordinance in express terms does not apply to such a route because there are franchises or contracts which provide that the passenger shall pay a different rate of fare.

There is nothing about the ordinance which is confusing or contradictory. Its terms are plain and unambiguous. Where franchises provide different rates of fare, the rates of fare fixed in the ordinance do not apply. It is so provided in Section 5 thereof. Appellant company nor any of its officers or agents could be prosecuted for a violation of the ordinance if they did no more than to stand upon their contract rights and demand the payment of the fares fixed in the grants or contracts, to which the ordinance by its own terms does not apply and which by its own terms excepts these several contracts. The terms of the ordinance apply only to the non-franchised lines, and to the franchise lines in those cases only where the contracts do not provide other conditions or different rates of fare.

This, we submit, is the proper construction of the ordinance. Every intendment should be taken in favor of its validity, and it should be sustained as a matter of law unless its invalidity can be clearly shown. Whether it is practical or impractical, should not weigh for or against it, if as a matter of law it contains no legal infirmity and leaves the contracts of appellant company free to be enforced and complied with according to their terms, when the whole ordinance is read together.

Appellant company is not obliged or compelled to do anything under the ordinance except not to collect a higher fare than stipulated in its several contracts. It is not even compelled to operate its cars upon its non-franchised

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lines. Neither is it required to render service to the public on its non-franchised lines because of any duty it owes to the public, or because of any contract obligation or other consideration or reason. As was said by Judge Tuttle in the lower court in his written opinion:

> "Here the plaintiff makes no claim that it is under duty, or that it possesses the right, to continue to operate its street cars upon what it refers to throughout its bill as the 'non-franchise' lines in the city.
>
> "It has in fact been decided by the United States Supreme Court that with the expiration of the franchises formerly held by this plaintiff the right of the latter to occupy streets of the city with its tracks, also expired.
>
> *"Detroit United Railway vs. City of Detroit*, 229 U. S. 39.
>
> "In declaring the status of the Railway Company the Court, in the case just cited, used the following language:
>
> "'Nor do we find more force in the claim of an implied contract to permit the railway to remain in the streets under such reasonable arrangments for public service as the situation might require. The right to grant the use of the streets was in the city. It had exercised it, had fixed with agreement with the railway the definite period at which such rights should end. At their expiration the rights thus definitely granted terminated by force of the terms of the instrument of grant. The railway took the several grants with knowledge of their duration, and has accepted and acted upon them with that fact clearly and distinctly evidenced by written contract. The rights of the parties were thus fixed and cannot be enlarged by implication.' (Citing cases)."

Counsel on page 25 of their last brief filed herein, contend that the case at bar is ruled by the case of *Denver vs. Denver Union Water Co.*, 246 U. S. 178. But we are able

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to observe a wide and distinguishing difference between the two cases. In the Denver case the majority of this Court held that the city by its conduct with reference to the Water Company after the expiration of its franchise, had imposed conditions which gave the Water Company rights in the streets of indefinite duration; while in the case at bar, Detroit City has done nothing to grant the Company additional rights or rights of indefinite duration in the streets where its franchises have expired.

But everything that the City has done since the expiration of appellant's franchise was to assert that the Company had no rights in the streets whatever, and that it might be compelled to remove its property from the streets, and particularly Fort street, whenever the city authorities determined upon such a course.

In the case of *Detroit United Railway vs. City of Detroit*, 229 U. S. 39, supra, this Court affirmed the judgment of the Supreme Court of Michigan in which it was held that the appellant company had no rights in Fort street, and that its contract rights had expired by limitation, and that it could be required to remove its property from Fort street within a reasonable time after notice from the Common Council of the City to such effect.

The city, for the purpose of obtaining a similar judgment or decree in respect to other streets of the city now occupied by appellant company, through its Common Council on July 30, 1918, directed the Corporation Counsel to institute proceedings to secure a judgment of ouster against appellant company upon the streets where its franchises had expired. In obedience to this direction of the Common Council, a suit was instituted and is now pending in the Circuit Court for Wayne County, State of Michigan.

See page 21 of the answer of the city to the petition of appellant railway company in the proceedings taken before Mr. Justice Day.

As further distinguishing the two cases, it appears that Denver had but one water company, which supplied the City of Denver and its inhabitants with water; while in Detroit there are two lines of railway, united, it is true, but which are severable and distinct. One line will carry passengers at a rate of 8 tickets for a quarter, while the other line carries passengers on the payment of a 5 cent fare.

As further distinguishing the two cases: The inhabitants of the City of Denver could not live and be deprived of water for any considerable length of time, while the City of Detroit may be deprived, as it has been deprived on account of strikes, of street railway transportation facilities.

Counsel for appellant say in their brief, page 28, that the two cases differ only in degree and not in kind. Our reply is that they differ in kind and degree as well. It is a matter of common knowledge, of which the Court will take judicial notice, we believe, that not infrequently in times past strikes have occurred on railway lines in large cities of this country, and that during the period of these strikes such cities were deprived of street railway transportation; while, on the other hand, it is a matter of common knowledge that the inhabitants of no large city ever went without water for any considerable time.

In my opinion, the Denver case was a hard one to decide and should be allowed to stand upon its own peculiar facts and not become a precedent except in cases where the facts and circumstances and the situation of the parties are identically the same.

It is submitted that the lower court properly and legally disposed of this cause when it dismissed appellant company's bill and refused to grant the relief prayed.

ALLAN H. FRAZER,
*Corporation Counsel.*

RICHARD I. LAWSON,
*Of Counsel.*

# SUPREME COURT OF THE UNITED STATES.

October Term.

No. 666.

DETROIT UNITED RAILWAY,
Appellant,
vs.
CITY OF DETROIT,
Appellee,

(File No. 26,752)

## BRIEF ON BEHALF OF APPELLANT IN REPLY TO BRIEF OF APPELLEE'S COUNSEL.

We find upon examination of the brief filed in this cause by counsel for appellee that for the most part it consists of extracts from unexpired franchises of the plaintiff Company other than those specifically referred to in plaintiff's brief, and undertakes to point out difficulties confronting the Railway Company in complying with the provisions of some of these franchises.

We submit that this discussion is entirely foreign to the question involved in this case on this hearing, namely, the question of the validity of the franchise adopted by the Common Council of the City of Detroit on August 9, 1918.

This suit does not involve the question of establishing or enforcing the rights of passengers entering upon the defendant company's cars within the territorial limits embraced within such franchises referred to by appellee's counsel and it is no part of the duty of the Common Council of the City of Detroit to undertake to enforce the rights of passengers so entering the cars of plaintiff company by means of enacting an ordinance like the ordinance in question. Indeed there is no reason to assume that there is any complaint by passengers within such territory or that they did not recognize and respect the recommendation of the War Labor Board referred to.

The whole discussion relating to this subject can only, if considered, tend to confusion and has no proper place in the consideration of this case on this appeal.

We repeat that the only question involved herein is the validity or invalidity of the ordinance in question, dependent upon whether its provisions impair the contractual rights of the plaintiff under its franchises or takes its property without due process of law, within the meaning of the provisions of the Federal Constitution referred to in our original brief.

The discussion of counsel in connection with the matter, however, throws some light upon what was intended to be accomplished by the enactment of the ordinance in question.

On page 12 of their brief, appellee's counsel say:

> "Two passengers boarding cars in the old township of Springwells, one tendering a ticket and the other a straight 5 cent fare, one would be entitled to ride to the City Hall in the City of Detroit, while the other would be entitled to ride only to Livernois Avenue. When the car arrived at Livernois Avenue, it would be impracticable to separate these

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two passengers and require the one that tendered the ticket to leave the car and permit the other who tendered a straight 5 cent fare to remain on the car until it reached any point west of Woodward Avenue, which might be to the City Hall."

Is it intended to argue from this statement that the confusion and uncertainty claimed to exist because of the variation in unimportant features of the franchises referred to as to rates of fare, are aided by the enactment of an ordinance that creates greater confusion and uncertainty by reason of its indefinite and uncertain provisions?

The paragraph in the middle of page 10 of appellee's counsel's brief also throws some light on this aspect of the situation. After referring to the unexpired franchises of the plaintiff providing for five cent fares, etc., counsel say:

> "Appellant may collect the fares upon its lines of railway under these contracts. It has the unchallenged right so to do, and there can be no objection to its standing upon these contracts and demanding full compliance with their terms by the public."

Counsel continues (p. 11):

> *"If the Company can 'practically' enforce these contracts, then it has the unquestioned power so to do, but the difficulty which presents itself is, that the appellant cannot 'practically' enforce the provisions of all its contracts with reference to the collection of fares because of the different rates of fare provided in the different contracts, as well as because the appellant has not track facilities or other equipment or privileges whereby to distinguish practically where one contract begins and another terminates."*

It appears, therefore, that when the ordinance complained of was enacted, it was fully recognized that by reason of the difficulties here suggested—"because the ap-

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pellant has not track facilities or other equipment or privileges whereby to distinguish 'practically' *where one track begins and another terminates*"—the City intended, by the enactment of the ordinance referred to, to compel the railway company to carry all passengers entering upon its cars on all of its lines anywhere within the city upon the rates of fare fixed by the said ordinance.

If it had been intended that the provisions of the ordinance referred to should relate only to the non-franchise lines of plaintiff and it had so provided, the indefiniteness and uncertainty of the provisions of the ordinance would have been to some extent avoided; but, as very plainly stated, there was nothing in the physical situation of the plaintiff's property that would enable either its employes or the public to determine where one contract giving the plaintiff rights began and others terminated, and the provisions of the ordinance enacted in view of this situation could only have the effect of impairing plaintiff company's contractual rights under its unexpired franchises and the provisions of the so-called "exception" contained in paragraph five of the ordinance in no way aided either the public or the employes of the plaintiff company to make certain and definite what was made uncertain and indefinite by reason of the physical situation of the plaintiff's property.

We submit that the admissions of counsel above referred to clearly support the allegation in plaintiff's bill of complaint "that the enactment of the ordinance complained of was intended to prevent the plaintiff company from enforcing the provisions of its unexpired franchises."

Referring again to the so-called exception contained in paragraph 5 of the ordinance complained of:

> "The provisions of this ordinance shall not be construed as an attempt to impair the obligation

> of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract"—

we submit that this is just such a clause as this Court in the case of *Denver vs. Water Company,* 246 U. S., 178, determined to be "inexplicit" and as having no effect in modifying or qualifying the enacting clause of the ordinance there under consideration.

The ordinance under consideration in that case, after the enacting clause, contained a declaration "that the enactment is made without recognizing the company's rights to occupy the streets or continue its services." This declaration was deemed ineffective to qualify the enacting clause of the ordinance which was construed as a grant to the Water Company of new rights.

As was said in that case by this court, we would say in this case: that the declaration referred to—"The provisions of this ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract"—does not qualify or modify the plain unambiguous meaning of Section 4 of the ordinance under consideration in this case, namely,—

> "Sec. 4. Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for twenty-five cents."

and in this particular, as well as others pointed out in the original brief, the provisions of the two ordinances referred to are analogous.

We recognize that where a law or ordinance, or part of a law or ordinance, is attacked for unconstitutionality and it can be taken in two senses—the one constitutional and the other unconstitutional—the courts will construe it in the constitutional sense. But if, as in this case (referring to Section 4 of the ordinance) the enactment can bear but one meaning, the court must give it that meaning notwithstanding a legislative declaration that it is to be effective only within constitutional limits.

To say explicitly, as in Section 4—"Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six tickets for twenty-five cents"—and then at the end of the ordinance make a declaration that the provisions of the ordinance shall not be construed "as an attempt to impair the obligation of any *valid* contract," we submit cannot have the effect of modifying or qualifying the explicit unambiguous provisions of Section 4, but only renders the declaration itself invalid, because of its uncertainty and indefiniteness.

Again, referring to the statement of counsel on page 13 of their brief—"It must be borne in mind that when the ordinance here complained of was adopted, the appellant company was attempting to set aside the rates of fare provided in some of these several grants, to which we have called attention," and again, on page 15,—"Furthermore, when appellant company attempted to enforce the unlawful rates of fare fixed in the schedule, riots and disorders and breaches of the peace followed upon the car lines of appellant where passengers in numerous instances refused to pay the increased rate. To overcome, if possible, all these difficulties, the Common Council of the city was

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moved to adopt the ordinance complained of,"—having in mind that the effect of the provisions of the ordinance complained of, as construed by appellee's counsel, was to fix different rates of fare upon the same line or route of the plaintiff's railways system,—a fare to be paid in franchise territory and a fare to be paid in non-franchise territory, on the same line or route which would not entitle the passenger on the same trip in the franchise territory to pass the line of the franchise territory without paying an additional fare,—we submit that it was this action that created the disturbances and riots referred to.

As was pointed out by Chief Justice White in

*Cleveland vs. Cleveland City Railway Co.*, 194 U. S., 531,

the result to be naturally expected from the action taken by the City in enacting the ordinance referred to, promptly followed. Chief Justice White, in the case referred to, said:

> "Respecting the contention that the case presented by the record was not within the jurisdiction of a court of equity, it sufficies to say that, in view of the controversies, confusion, risks and multiplicity of suits which would necessarily have been occasioned by the resistance of the complainant to the enforcement of the ordinance, and in view of the public interests and the vast number of people to be affected, the case was one within the jurisdiction of a court of equity. *This conclusion is, we think, besides inevitable, when it is borne in mind that the ordinance in question did not purport to reduce rates of fare upon the consolidated line, but was made operative alone upon a section of that line, and, therefore, necessarily, would have engendered the enforcement of two rates of fare over the same line, leading to consequences dangerous to the public interest, peace, and tranquillity, the extent of which it would be difficult in advance to perceive.*"

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Referring to the statement of counsel and quotation of section of Michigan Statutes (pp. 9 and 10 of their brief):

> "The law of Michigan under which the appellant company is organized, provides that the rates of fare shall not be increased on street railways without the consent of the local authorities.
>
> Section 8551 Compiled Laws of Michigan, 1915, reads:
>
> "The rates of toll or fare which any Street Railway Company may charge for the transportation of persons or passengers over their road, shall be established by agreement between such company, and the corporate authorities of the city or village where the road is located, and shall not be increased without the consent of such authorities.' "—

we submit that the same has no application to the existing situation so far as it relates to the portions of the plaintiff company's line of railway not now controlled or regulated by the provisions of any existing franchise, namely, the so-called non-franchise lines.

The provision referred to is Section 20 of the Street Railway Act of 1867 and has reference only to situations where a rate of fare has been agreed upon between a municipality and a railway company in pursuance of the provisions of such Act. This section was considered by this court in

*Detroit vs. Detroit Citizens Street Railway Co.*, 184 Mich., 389,

where Mr. Justice Peckham said:

> "The language of Section 20 in the Street-railway Act of 1867, which provides that the rate of fare agreed upon shall not be increased without the consent of the city authorities, does not mean that the rate may be reduced without the consent of the railway companies, nor does it show the parties did not suppose there was a contract between them as to rates. *That provision does not seem to perform*

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*any material function, because without it, the parties having agreed upon the subject of rates, it would follow that the agreement could not be altered by either party without the consent of the other."*

It will be noted that the learned counsel for the City does not attempt to question the accuracy of the statement of facts outlined in our original brief relating to the matters to be considered by the court on this appeal. Nor do counsel attempt in any way to meet the allegations of the plaintiff that by the application of the provisions of the ordinance complained of to the business of the Company for the first six months of the present year, that plaintiff's property, excluding the so-called three cent lines, would have been operated at a loss of..$ 699,683.51
without taking into account any return upon the value of plaintiff's property employed rendering this service ($33,523,023), upon which value at the rate of 6% plaintiff would be entitled to a return for such six months of ..... 1,005,702.64

which would make a total loss for such six months of .....$1,705,386.15

Prima facie, at least, the same result would follow during the next six months.

At the bottom of page 18 of counsel's brief will be found the following statement:

> "The city, for the purpose of obtaining a similar judgment or decree in respect to other streets of the city now occupied by appellant company, through its Common Council on July 30, 1918, directed the Corporation Counsel to institute proceedings to secure a judgment of ouster against appellant company upon the streets where its franchises had expired. In obedience to this direction

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of the Common Council, a suit was instituted and is now pending in the Circuit Court for Wayne County, State of Michigan."

We submit that this statement is an improper statement to be contained in a brief upon this hearing. As we understand the situation, the case is to be heard in this court upon the bill of complaint only, which is all that was before the court below when the decree was entered from which the appeal in this case was taken.

We further do not understand that the papers presented to Mr. Justice Day on the application made for a temporary injunction are a part of the records of this case or on file in this court. If, however, it should be deemed proper to refer to this subject, it will be noted, as stated by appellee's counsel above, that the resolution referred to, directing the Corporation Counsel to institute proceedings to secure a judgment of ouster upon streets where its franchises had expired, was adopted July 30, 1918. The ordinance in question, which we contend granted the plaintiff company *new rights* in the streets referred to, was enacted *after* the adoption of this resolution and would therefore necessarily operate as a revocation of the provisions of that resolution.

In addition to this, as the records of this court show, the right of the City to cause the plaintiff company to remove its tracks and property from the streets where its franchises have expired, was established more than five years since by the decision of this Court affirming the decision of the Supreme Court of Michigan in *Detroit United Railway vs. Michigan*, 242 U. S. 238.

For more than five years the City has had under its control the writ of assistance of the court with authority to execute it by causing the removal of plaintiff's tracks

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and property in Fort Street in that city at any time it saw fit to do so.

The fact that this writ has not been executed simply evidences the fact that the needs of the public require the service of the plaintiff's railway system, both its franchise and non-franchise lines, and for that reason such writ has not been executed. No notice to the Railway Company to vacate the streets where its franchises expired has been given except in the Fort Street case referred to and the ouster suit referred to was only intended to place the city in position where it could execute its power should any time arrive when the needs of the public would warrant the removal of the plaintiff's tracks from the streets of the city. The plaintiff's tracks and property are in use in serving the public needs of the City of Detroit and so long as they are in use, they must be treated as property in use, and if a valuation becomes necessary, must be valuated as property in use.

We submit, in conclusion, that the decree of the Court below should be reversed, either with the direction to grant the injuction as prayed for or that the decree of this Court should provide for such an injunction continuing in force, unless modified or dissolved by the Court below upon a proper showing.

We further submit that we ought not, in view of the unusual action of the Court below, be left without any substantial relief in a case where four months ago we were entitled to the relief prayed for.

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Syllabus.

# DETROIT UNITED RAILWAY *v.* CITY OF DETROIT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

No. 666. Argued December 9, 10, 1918.—Decided January 13, 1919.

Where the District Court, in denying a preliminary injunction, of its own motion dismisses the bill, its action is equivalent to sustaining a demurrer, and, upon appeal, the allegations of the bill must be taken as true. P. 431.

A city, instead of exercising its power to compel the removal of tracks operated by a street car company without franchise, passed an ordinance looking to their continued operation by the company and prescribing fares and transfer privileges and penalties for violations. *Held*, equivalent to a grant of a right to operate during the life of the ordinance, entitling the company to a fair return on its investment. *Denver* v. *Denver Union Water Company*, 246 U. S. 178. P. 435.

A company operated a system of city street car lines, for some of which it had franchises entitling it to charge a certain fare and for others no franchises. An ordinance, regulating the entire system, purported explicitly to fix the fares for trips over two or more lines, whether franchise or not, and forbade extra charge for transfers, defining a continuous trip as a journey from one point to another in the city, whether made on one car or line, or by transferring from car to car or from line to line; declaring, however, that it should not be construed as an attempt to impair the obligation of any valid contract, but should apply to and govern all such street railway passenger traffic in the city except where governed by the provisions of such contract.

*Held:* (1) That the latter declaration must be construed as referring only to trips wholly on the franchise lines (p. 435); (2) that if its enforcement would result in a deficit to the company, as alleged, the ordinance violated the due process clause. P. 436.

An ordinance compelling a street car company to carry passengers on continuous trips over franchise lines to and over non-franchise lines, and vice versa, for a fare no greater than its franchises entitle it to charge upon the former alone, impairs the obligation of the franchise contracts. *Detroit United Railway* v. *Michigan*, 242 U. S. 238. P. 437.

Reversed.

THE case is stated in the opinion.

*Mr. Elliott G. Stevenson*, with whom *Mr. John C. Donnelly*, *Mr. William L. Carpenter*, *Mr. P. J. M. Hally* and *Mr. Bernard F. Weadock* were on the briefs, for appellant.

*Mr. Allan H. Frazer* and *Mr. Richard I. Lawson* for appellee.

MR. JUSTICE DAY delivered the opinion of the court.

The Detroit United Railway Company brought this action in the United States District Court for the Eastern District of Michigan to enjoin the City of Detroit from enforcing the provisions of an ordinance regulating street railway fares in that city. The ordinance was passed August 9, 1918. It is printed in the margin.[1]

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[1] *An Ordinance* to fix and establish maximum rates of fares and charges which may be exacted and received by persons, corporations or partnerships operating street railways for the carriage of passengers within the City of Detroit, and to fix a penalty for the violation thereof.

*It is Hereby Ordained by the People of the City of Detroit:*

Section 1. No person, partnership or corporation operating a street railway on the streets of the City of Detroit, for the carriage of passengers for hire, shall charge more than five cents for a single ride, or six tickets for 25 cents, per person for one continuous trip within the city over any line which is now operated or shall hereafter be operated without a franchise fixing the rate of fare.

Section 2. No such person, partnership or corporation shall charge a higher rate of fare upon any line now or hereafter operated under a franchise contract than is fixed by such franchise.

Section 3. Between the hours of five and six-thirty a. m. and four forty-five and five forty-five p. m. tickets in strips of eight for twenty-five cents shall be sold on all cars on all lines except where such sale would be contrary to the terms of a franchise contract, which tickets shall entitle the holder to the same rights between said hours as the payment of a five cent fare would.

Section 4. Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee

The bill attacks the ordinance upon two constitutional grounds: 1st, That it impairs the obligation of the company's existing contracts; 2nd, That it is confiscatory and hence deprives the company of its property without due process of law. The suit came on for hearing before the district judge upon an application for a temporary injunction, the judge denied the application and upon his own motion dismissed the bill.

The question upon this appeal is: Did the bill, taking its allegations to be true, state grounds for relief to which the company was entitled upon the facts set forth? The action of the District Court was equivalent to sustaining a demurrer to the bill.

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shall be exacted which raises the total charge to more than five cents or six for 25 cents.

Section. 5 A continuous trip means one journey from point to point within the city, whether the same is made upon one car or one line or by means of transferring from car to car or from line to line. Each such person, partnership or corporation, and the officers, agents, servants and employés thereof, shall, upon demand, furnish proper transfers to carry into effect the provisions of this section. The provisions of this Ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract.

Section 6. Any such person, partnership or corporation which shall violate the provisions of this Ordinance, or shall attempt to do so, and any officer, agent, servant or employé who shall order or direct any such violation or attempted violation of the provisions of this Ordinance, shall be guilty of an offense, and upon conviction shall be fined not to exceed five hundred dollars, or imprisoned in the Detroit House of Correction for not to exceed ninety days, or shall be both fined and imprisoned in the discretion of the court, for each violation.

Section 7. This Ordinance is passed for the public welfare in the case of an emergency involving the peace, health and safety of the people of the city, and it is ordered to take immediate effect. It may be amended or repealed at any time by the Common Council of the City of Detroit. Unless so amended or repealed it shall remain in force for one year from August 9, 1918.

The bill alleges that the complainant company is the owner of all the street railways in the City of Detroit, constituting a system of tracks of upwards of two hundred and seventy miles. The sources of title of the company are set forth in the bill, and shown by many exhibits. It is sufficient for the present purpose to say that the system consists of a considerable mileage of tracks upon which the franchises have expired; upon other portions of the system there are unexpired franchises, some of them derived from villages in which the roads were constructed, which villages were subsequently incorporated into the city. That from December 1, 1917, its system was operated, except the so-called 3-cent lines, upon terms as follows: 5-cent cash fares for each passenger carried on or over its lines, including so-called universal transfers, with workingmen's tickets, 8 for 25 cents, between certain hours, and on the so-called 3-cent lines a cash fare of 5 cents, with 8 tickets for 25 cents between certain hours; good only on such 3-cent lines with the privilege of a transfer on payment of a 5-cent cash fare, and also with the privilege of purchase of 6 tickets for 25 cents, also good between certain hours. It is averred that afterwards it became necessary to increase rates of fare. The bill recites the demand of the employees of the company for increased wages, which was refused; that a submission of the controversy was made to the War Labor Board; that the Board after a hearing awarded a substantial increase of wages, and recommended an increase in passenger fares to enable the company to meet this cost. The bill alleges that the increase made by the War Labor Board amounted to about $2,000,000 per annum. The company petitioned the city for an increase of rates of fare, and this petition was denied.

On August 7, 1918, the company put in force a schedule of its own, making single fares 6 cents, with 10 tickets for 55 cents, cash fare or tickets good on connecting or inter-

secting lines within the city. It is contended that this action of the company was without legal authority. Whether this was authorized or not, is not an issue involved in this case, and we express no opinion concerning it. The matters involved in this bill concern the validity of the ordinance passed August 9, 1918.

It is further alleged that Detroit is a city of a population exceeding 750,000; that it is an industrial city with much the larger part of its male population employed in industrial plants within and adjacent to the city; that the operation of the company's railway system was the only means of transportation of such employees from their homes to their places of employment, and that the interruption of the operation of the company's system, or the separation in operation of the franchise from the non-franchise lines, would paralyze the industrial and business life of the city, throw thousands of its residents out of employment, and result in shutting down its industrial plants and factories. Allegations follow setting forth the value of the company's property, and stating that the effect of the ordinance, if enforced, will be to require the operation of the company's system at a deficit, and, consequently, with no return on the investment.

The learned district judge answered the contention of the company by holding, in substance, that as to the non-franchise lines the remedy of the company was to abandon the service and take its property from the city streets, and that as to the franchise lines the exception of the fifth section of the ordinance saved the company's contract rights from impairment. There can be no question that it was within the city's power to compel the company as to its non-franchise lines to remove its tracks from the streets of the city. This was settled in *Detroit United Railway* v. *Detroit*, 229 U. S. 39. The city did not do so. Instead of taking such action it passed the ordinance in controversy, providing for the continued operation of

the company's system. This ordinance has application to the entire street railway system. In section one it provides that no more than 5 cents shall be charged for a single ride, or 6 tickets for 25 cents, for one continuous trip through the city over any line operated without a franchise. Section two purports to preserve the right to charge franchise rates when fixed by contract. Section three provides for fares, 8 tickets for 25 cents, except when such fares are contrary to contract rights. Section four provides that where a trip is over two or more lines, whether franchise or not, the maximum fare shall be 5 cents, or 6 tickets for 25 cents, and no transfers shall be exacted which raise these rates of fare. Section five defines a continuous trip to mean a journey from one point in the city to another, whether on one car line or by means of transfers, and the company is required to furnish transfers to carry the provisions of the ordinance into effect. It is further provided that the ordinance is not to be construed as an attempt to impair the obligation of any valid contract, but shall apply to all street railway passenger traffic in the city except when the same is governed by the provisions of a contract. Section six provides for fines or imprisonment for violations of the provisions of the ordinance. Section seven provides that the ordinance shall be in effect for the term of one year from August 9, 1918, unless sooner amended or repealed.

The allegations of the bill, which for the present purposes must be taken as true, are ample to the effect that the enforcement of this ordinance will result in a deficit to the company. We cannot construe the exception of section five, having reference to existing franchise contracts, in such way as to modify the requirements of section four which in explicit terms fixes the fares for trips over two or more lines whether franchise lines or not, and limits the maximum fare without charge for transfers. This must be read in view of the definition of a continuous

trip in section five, as meaning a journey from one point to another point in the city whether the same is made on one car line or by means of transfers from car to car or from line to line. The exception in section five can have no further effect consistently with the other provisions of the ordinance, particularly those of section four, than to regulate fares where trips are wholly upon franchise lines. A principal ground upon which the bill was dismissed by the District Court was the view of the learned judge that the power to compel the company to remove its tracks from the streets involving the non-franchise roads included the right to fix terms of continued operation upon such lines, whether remunerative or not. We cannot agree with this view. In our opinion the case in this respect is ruled in principle by *Denver* v. *Denver Union Water Co.*, 246 U. S. 178. In that case the franchise of a water company had expired, and the city might have refused the further use of the streets to the company. Instead of doing this it passed an ordinance fixing rates and requiring certain duties of the company. We held that in that situation the company was entitled to make a reasonable return upon its investment. So here, the city might have required the company to cease its service and remove its tracks from the non-franchise lines within the city. Instead of taking this course the city enacted an ordinance for the continued operation of the company's system, with fares and transfers for continuous trips over lines composing the system whether the same had a franchise or not. This action contemplated the further operation of the system, and fixed penalties for violations of the ordinance. By its terms the ordinance is to continue in force for the period of one year, unless sooner amended or repealed. This was a clear recognition that until the city repealed the ordinance the public service should continue, with the use of the streets essential to carry on further service. Within the principles of the

*Denver Case* this service could not be required without giving to the company, thus affording it, a reasonable return upon its investment. In the *Denver Case* we said: "The very act of regulating the company's rates was a recognition that its plant must continue, as before, to serve the public needs. The fact that no term was specified is, under the existing circumstances, as significant of an intent that the service should continue while the need existed as of an intent that it should not be perpetual."

In the present case the service upon the terms fixed in the ordinance is continued for a year, the city reserving the right to repeal the ordinance at any time.

It is clear that the city might have taken a different course by requiring the company to remove its tracks from the non-franchise lines; it elected to require continued maintenance of the public service, doubtless because it was believed that it was necessary in the existing conditions in the city to continue for a time at least the right of the railway company to operate its lines. This amounted to a grant to the company for further operation of the system, during the life of the ordinance. For this public service it was entitled to a fair return upon its investment. Elements to be taken into consideration in valuing the property of the company in estimating a fair return are not involved in this case. If the allegations of the bill are true, and for present purposes they must be so regarded, the continued operation of the railroad system of the company upon the fares fixed in the ordinance will result in a deficit, and deny to the company due process of law within the meaning of the Federal Constitution.

As rates of fare are fixed on some of the existing franchise lines at 5 cents without transfers, it would follow as to continuous trips over such franchise and non-franchise lines, such trips comprehending much of the trans-

portation required, the latter lines would be without compensation for the service rendered. Furthermore, when a continuous trip begins on a non-franchise line and is over a franchise line and a non-franchise line, the former having the right to charge 5 cents for a trip over it, the effect would be to impair the obligation of the franchise contract. *Detroit United Railway* v. *Michigan*, 242 U. S. 238.

In our view the allegations of this bill for the purposes of the demurrer sufficiently alleged violations of the Constitution of the United States in the action of the city in passing and enforcing the ordinance in controversy. The District Court should have entertained the bill, heard the application for a temporary injunction, and proceeded to a hearing and determination of the case in due course.

*Reversed.*

MR. JUSTICE CLARKE dissenting.

The relation between the city and the railway company, when the ordinance which the court holds unconstitutional was passed, was this:

The company owned three classes of tracks, viz:

(a) Those in the business and residence streets most productive of traffic, constituting the greater part of the lines of the company. Its authority to maintain these tracks expired in 1909–1910, and they are designated in the record as "Non-franchise lines." It will be convenient to refer to the streets in which these lines are located as "Non-franchise streets."

(b) Tracks designated as "Three-cent franchise lines," (Exhibit "T"), also largely in business and important residence streets. The company had franchises for these lines under which it was obliged to sell eight tickets for twenty-five cents good from 5.45 a. m. to 8 o'clock p. m. and six tickets for twenty-five cents good during the

remainder of the twenty-four hours. Such tickets entitled the holders to transfer privileges only on all three-cent lines.

(c) Disconnected sections of track, of small mileage, in streets remote from the business parts of the city. For these lines the company had unexpired franchises granted by villages and townships before the extension of the city limits included them, which allowed a fare of five cents, in some places, in others five cents with transportation to the City Hall. The mileage of these grants varied from five miles to "six blocks" in length, they are described in the bill as lying, some to the north, others to the south, others to the east and others to the west of the city, as it was when the grants were made and, thus widely separated, they had no connection one with the other, except over non-franchise or three-cent franchise tracks. These are designated as "Five-cent franchise lines."

It was stated at the bar by counsel for the city, and not questioned, that there were about one hundred and fifty miles of non-franchise lines, about sixty-five miles of the three-cent franchise lines, and only fifty-five miles of five-cent franchise lines.

In their brief counsel for the company say that the larger part of the company's lines had been operated for several years prior to December, 1917, on what was known as the "Day-to-day agreement," (and see *Detroit United Railway* v. *Detroit*, 229 U. S. 39, 42), under which a rental was paid to the city for the use of the streets and the company was allowed to charge a cash fare of five cents or seven tickets for twenty-five cents, except during an hour and a half in the morning and one hour in the evening, when tickets sold eight for twenty-five cents were accepted. For these fares transfers were given over the entire lines of the company. Either party could withdraw from this arrangement at any time, and in December,

1917, the company did withdraw from it and thereafter was allowed to charge, on other than its three-cent franchise lines, a cash fare of five cents, but with eight tickets for twenty-five cents, good for one and a half hours in the morning and for one hour in the evening. Universal transfers were allowed for these fares.

This arrangement continued until August 2, 1918, when, not satisfied, the company proposed to the city a five-cent fare with a charge of one cent for a transfer over all lines in the city one-fare zone, or, in the alternative, a six-cent fare with ten tickets for fifty-five cents and universal transfers, the franchise rates on the three-cent lines to continue, except that for the fares last named universal transfers would be given.

This proposal the city rejected and thereupon the company, without any authority from the city, put into operation the second proposal above stated, allowing transfers over any connecting or intersecting line within the city limits. In response to this action of the railway company the city passed the ordinance which, for two reasons, the court has held invalid, viz:

(1) Over certain of the franchise lines a five-cent rate of fare without transfers was provided for in the grants, and because section four of the ordinance required transportation "where a trip is over two or more lines, whether franchise lines or not," without transfer charge, it is held that, if this provision were enforced, the effect would be to impair such five-cent franchise contracts and that the ordinance is therefore void.

(2) Interpreting the ordinance as a grant to the company of the right to operate its lines, franchise and non-franchise, at rates which the bill alleges to be non-compensatory, the court holds it invalid because it would deprive the company of its property without due process of law.

The case must be considered on the allegations of the

bill as if on demurrer and my reasons for dissenting from both of these conclusions of the court are as follows:

As to the first. It is not anywhere alleged in the bill that the "Five-cent franchise lines" (no complaint is made as to the 3-cent lines) can be operated separately and profitably or that less income would be realized from them if operated under the terms of section four in conjunction with the non-franchise lines than if they were operated as separate properties, if such thing be possible, charging the five-cent franchise rate without transfers. Without such an allegation it is pure conjecture to say that the company would suffer loss and that its contract would be impaired by giving effect to section four. He who would strike down a law must show that the alleged unconstitutional feature injures him and operates to deprive him of rights protected by the Federal Constitution. *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 534.

But the bill not only fails to allege that the railway company would suffer loss from giving effect to section four, but it states facts which render it highly probable, if not entirely clear, that it would benefit by it.

All five-cent franchise lines appear from the bill to be, as we have said, outlying, of limited mileage, and so wholly disconnected one from the other that it would not be practicable to operate them profitably, if at all, except in connection with non-franchise lines. The record shows that in the past they have been so operated, with mutual transfers, and both of the proposals of the company made to the city on August 2, 1918, contemplated such operation. In the absence of allegation to the contrary, the reasonable inference from this description of the five-cent franchise lines and this practice with respect to them is, that it is not practicable to operate them profitably as separate properties and that whatever value there is in them must be realized by operating them jointly with the non-franchise lines, with mutual transfers, and that the

company would be benefited, and not injured, by being permitted to so operate them under section four.

But, should this section four be construed to prescribe a rate for transfer over franchise lines?

The first section, as printed in the margin of the court's opinion, prescribes a charge "for one continuous trip within the city over any line *which is now operated* or shall hereafter be operated, *without a franchise fixing the rate of fare.*"

Clearly this is intended not to apply to the franchise lines.

The second section declares that the charge over franchise lines shall not be greater than is fixed in the franchise.

This plainly contemplates allowing the full franchise rate where one exists.

Section three provides for the special or "workingmen's" tickets but carefully excepts from its application "all lines . . . where such sale would be contrary to the terms of a franchise contract."

Section five in terms declares "the provisions of this Ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract."

Thus we have in the ordinance a declaration that the rate prescribed shall apply only to non-franchise lines, that the franchise rate shall apply on all franchise lines, that special ticket rates shall not apply where they conflict with franchise rates, and in addition there is the general declaration that the city council is intending to deal with non-franchise lines only, and that the ordinance shall not be so construed as to impair franchise contracts.

To this we must add that, it is clear that, excluding the five-cent franchise lines, this section four would still have

a large and indisputably valid application to both non-franchise and franchise lines. The ordinance was designed to apply to 150 miles of non-franchise lines, extending in all directions throughout the city, and to regulate transfers between various parts of these lines. In addition to this, the three-cent franchise lines are greater in extent and much more important than the five-cent franchise lines. From December, 1917, to August 2, 1918, transfers were allowed over all of the non-franchise lines and between the five-cent and three-cent franchise lines and the non-franchise lines upon payment of the fare prescribed in section four—five-cent fare, or six tickets for twenty-five cents—and it was plainly the primary purpose of the section to continue this rate and practice and not to permit the charge to be increased to six cents, as contemplated in the proposal of the company to the city of August 2, 1918. No complaint is made of the application of the section to the three-cent franchise lines.

All of this is overlooked by the court, and laying hold of the possible loss to the company (wholly improbable as we have seen) through the application of the section to the five-cent lines, the entire ordinance is struck down as unconstitutional.

This judicial power of declaring laws unconstitutional is of so high and delicate a character that it has been often declared by this court that it would exercise it only in clear cases, *Fletcher* v. *Peck*, 6 Cranch, 87, 128; *Fairbank* v. *United States*, 181 U. S. 283. Every possible presumption is in favor of a statute and this continues until the contrary is shown beyond a rational doubt, *Sinking-Fund Cases*, 99 U. S. 700, 718. The violation of the Constitution must be "proved beyond all reasonable doubt," *Odgen* v. *Saunders*, 12 Wheat. 213, 270; *Nicol* v. *Ames*, 173 U. S. 509, 515.

But if it be assumed that the application of section four would result in loss to the company and would impair

its five-cent franchise contracts, even then it would seem that the section should be annulled only in so far as it might be applied to such grants and that the remainder, which is not assailed, should be permitted to stand, under the rule of this court applied from *Bank of Hamilton* v. *Dudley*, 2 Pet. 492, 526, to *St. Louis Southwestern Ry. Co.* v. *Arkansas*, 235 U. S. 350, that if only part of an act be unconstitutional the provisions of that part may be disregarded and full effect given to the remainder, if severable from the unconstitutional part of the act, as it clearly is in this case.

Coming now to the second and more fundamental ground, on which the court proceeds to its conclusion. It is held that the ordinance contemplates the continued operation of the non-franchise lines, and therefore, applying the novel doctrine of the *Denver Union Water Company Case*, 246 U. S. 178, that it is a grant which, if given effect, would necessarily deprive the company of its property without due process of law, since the allegations of the bill are that it would be non-compensatory.

We are now dealing, not with an alleged attempt on the part of the city to require the company to operate its five-cent and its three-cent franchise lines at a loss, but with an offer to it of a right to operate the lines in the non-franchise streets, in which it has no rights, in conjunction with its other lines at what is alleged to be a non-compensatory rate for the entire system. The right of the company to operate the five-cent and three-cent lines was complete without the ordinance and the operation of them, as separate properties, was quite unaffected by it.

In defining the relation between the city and the company as it was before the ordinance, which is declared invalid, was passed, the court holds, as it must (229 U. S. 39), that the company had no rights in the non-franchise streets, and that the city had the right to order its tracks taken out of them.

This being the legal relation between the two parties, the company, on August 2, 1918, made its proposal for increased fares, which was rejected by the city. This proposal, when followed by rejection, obviously did not change the relation of the parties from what they were before it was made.

Thereupon the city made its counter-proposal by tendering the ordinance rates to the company, which promptly rejected them. It seems equally clear that this proposal and the rejection of it did not change the relations of the parties and that they continued precisely as they were before and as they were defined in the opinion of the court—the railway company without any rights whatever in the non-franchise streets. But, not so says the court, for the reason that the ordinance implies that the lines are to be operated and, under the *Denver Case*, it must therefore be interpreted as a grant, (contrary it would seem to *Blair* v. *Chicago*, 201 U. S. 400, 463), and, since it is alleged that the rates prescribed are non-compensatory, it is an invalid grant.

If it be conceded that the ordinance is in terms a grant, yet since every grant implies and requires a grantee, when the company refused to accept it the grant necessarily failed. It is obvious and elementary that no person or corporation can be made a grantee against his or its will. Kent Com., 13th ed., vol. 4, p. 455, note b. Thus, again, even on the assumption of the court, it would seem that the ordinance failed to change the relations of the parties from what they were before.

The conclusion of the District Court that this case can be distinguished from the *Denver Union Water Company Case*, and therefore is not to be ruled by it, seems sound, but the distinction need not be discussed.

The application of the principle of that case to this one must result in depriving the city of the power to treat with the company for terms for the operation of the tracks

which it owns in the streets in which its franchises have expired and in which this court has decided it has no rights whatever, except upon terms as favorable to the company as it would be entitled to if it had a valid and continuing grant to operate in them. The utmost that can be claimed for the ordinance is that it suffers the company to use streets which it could not use at all without it,—for the company to use them in any other way than as thus permitted would be unlawful. Yet this mere offer of this naked privilege, in terms revocable at will, and rejected by the company, is held to give a constitutional right and at the same time to so violate that right as to render the ordinance invalid. I cannot bring myself to understand how, except by sheer assertion of power, even the apparent justice of the result which it is hoped thus to obtain can be made the basis for creating a constitutional right where no right whatever existed before the passing of this rejected ordinance.

If the management of the company was misinformed as to the effect of the expiring of its franchises, as seems probable (229 U. S. 39), or if it underestimated the difficulties in the way of securing an extension of them, the result, as declared by this court in the case just cited, was to deprive the company of all legal rights in the non-franchise streets, and while its misfortune may be regretted, the apparent hardship of the situation is no valid ground for raising a constitutional right in favor of one of the parties, which will result in depriving the other party of an advantage which has lawfully come to it. Substantial justice is more likely to result from trusting to the sense of fairness of a community in dealing with such cases than from imposing upon a city a contract which a court shall make for them. The language used by Mr. Justice Holmes, when dissenting in the *Denver Case*, 246 U. S. 196, is sharply applicable to this case, *mutatis mutandis:* "We must assume that the Water Company

may be required, within a reasonable time, to remove its pipes from the streets. *Detroit United Railway* v. *Detroit*, 229 U. S. 39, 46. . . . In view of that right of the City, which, if exercised, would make the Company's whole plant valueless as such, the question recurs whether the fixing of any rate by the City could be said to confiscate property on the ground that the return was too low. . . . The ordinance of the City could mean no more than that the Company must accept the City's rates or stop—and as it could be stopped by the City out and out, the general principle is that it could be stopped unless a certain price should be paid."

For the reasons thus stated, I think that the ordinance is valid, and that the judgment of the District Court should be affirmed, and therefore I am compelled to dissent from the opinion and judgment of the court.

I am authorized to say that MR. JUSTICE HOLMES and MR. JUSTICE BRANDEIS concur in this opinion.